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NOMINATIONS—FEBRUARY-MAY

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

FEBRUARY 20, 1985

RICHARD H. JONES, TO BE DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

MARCH 5, 1985

MARY L. AZCUENAGA, TO BE COMMISSIONER, FEDERAL TRADE COMMISSION, CAROL G. DAWSON, TO BE COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

MARCH 6, 1985

EDWARD J. PHILBIN, TO BE COMMISSIONER, FEDERAL MARITIME COMMISSION

MAY 3, 1985

DOUGLAS A. RIGGS, TO BE GENERAL COUNSEL, DEPARTMENT OF COMMERCE

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RICHARD H. JONES TO BE DEPUTY ADMINISTRATOR, FEDERAL AVIATION ADMINISTRATION

WEDNESDAY, FEBRUARY 20, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2:06 p.m., in room SR-253, Russell Senate Office Building, Hon. Nancy Landon Kassebaum presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; Chuck Doyle, staff counsel; and Steve Palmer, minority professional staff member.

Senator KASSEBAUM. It is a pleasure to be chairing the confirmation hearing of Richard Jones for Deputy Administrator of the Federal Aviation Administration. Here to make the introduction is Senator Warner.

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM VIRGINIA

Senator WARNER. Thank you, Madam Chairman, and members of the committee.

I am pleasured this afternoon to be introducing Mr. Jones to the committee. He has been appointed by the President to serve as Deputy Administrator of the Federal Aviation Administration.

He is a graduate of Woodrow Wilson High School in Portsmouth, VA, as well as the Virginia Polytechnic Institute in Blacksburg, and he is a former marine, which qualifies him well for any position to which he might aspire. However, there are a number of other qualifications he possesses that highly qualify him for the position to which he has been very wisely appointed by our President.

First of all, he is an aviator. I believe, in order to understand the problems of aviation and the role that the FAA can take in controlling and regulating this industry, firsthand experience in invaluable. As a pilot for Eastern Airlines, from 1959 to 1984, Mr. Jones has been a part of the aviation industry that has matured into the major transportation mode in the United States and, indeed, throughout the free world.

In addition to his operational experience, Mr. Jones is also a practicing attorney-at-law. Understanding of aviation law coupled with pilot experience will enable Mr. Jones to bring a well-rounded point of view to the FAA.

Last, but not least, his experience as a member of the Virginia State Aviation Commission, from 1960 to 1966, gives him an outstanding understanding of the problems of government regulator.

Each of these three areas of expertise would quality Mr. Jones for a position at the FAA, but when we get a man with all three together, Madam Chairman, we had better move, I think, to confirm him, and I so urge you and members of this committee.

It has been a pleasure for me to take this role of introducing you.

Mr. JONES. Thank you, Senator Warner, for your kind remarks.

Senator KASSEBAUM. Thank you very much, Senator Warner.

Senator Kasten, do you have any opening comments you wish to make?

Senator KASTEN. No, Madam Chairman, I simply wanted to attend this meeting and cast my vote in the affirmative for this nominee, and I do.

Senator KASSEBAUM. Thank you. We have your biographical sketch and prehearing questions and answers.

[The material referred to follows:]

BIOGRAPHICAL SKETCH OF RICHARD HERBERT JONES

Address: 3400 North Albemarle Street, Arlington, Virginia 22207.

Date and place of birth: Portsmouth, Virginia, September 2, 1930.

Education: Woodrow Wilson High School, Portsmouth, Virginia—1947; Virginia Polytechnic Institute, Blacksburg, Virginia—B.S. Degree 1958; American University Law School, Washington, D.C.—J.D. Degree 1964.

Employment: From college—United States Marine Corps, 1953-1957; University of Miami Law School, 1958-1959; Eastern Air Lines, Inc., 1959-1984; Lawyer, private practice, 1964-1984; last 10 years with Lewis, Wilson, Lewis & Jones, Ltd., Arlington, Virginia.

Government experience: In addition to Marine Corps Service, 1953-1957 and 1960-1966, I served as a member of the Virginia State Aviation Commission for eight years, and as Chairman for two years, ending in 1980. I was also appointed by the Governor of Virginia to serve on the State Board for Community Colleges, which administered the 23 campus community college system in Virginia. In 1983, President Reagan appointed me to the Advisory Board of the Smithsonian National Air and Space Museum. On December 13, 1984, I was sworn in as Deputy Administrator of the Federal Aviation Administration (recess appointment), and have been carrying out the duties of that office to the present.

QUESTIONS OF SENATOR HOLLINGS AND THE ANSWERS

Question. Please outline for the Committee what experiences you have that make you qualified to serve as Deputy Administrator of the Federal Aviation Administration.

Answer. I have been a pilot since 1953, and have flown many different types of aircraft, including single engine jet fighters and multi-engine propeller and jet powered airline aircraft. I have more than 10,000 hours of flight time. I was an airline pilot for 26 years. I have flown in and out of most major airports in the United States, and am familiar with air operations in foreign countries as well.

I was a member for eight years, and chairman for two years, of the Virginia State Aviation Commission. I was appointed to the State Board for Community Colleges, which administers the 23 colleges of the Virginia State Community College System.

I was a military officer, retiring with the rank of Lieutenant Colonel in the United States Marine Corps, with active flight service in Korea and in Viet Nam.

For ten years, I was corporate secretary and a member of the Executive Committee of the Flight Safety Foundation International. I have been active in the Air Lines Pilots Association, serving as Secretary/Treasurer of the national organization and as Council Chairman of the local Eastern Air Lines pilot domicile in Washington.

As an attorney, I have been involved in aviation litigation, both on the plaintiffs' and defendants' side, and have represented a number of airmen and aviation organizations in enforcement and licensing cases before the FAA, CAB, and NTSB. I have written a number of articles on aviation safety and aviation law, and have served on various Bar Association committees with emphasis on aviation law, including the Chairmanship of the Air Transportation Committee of the Federal Bar Association. As an adjunct professor for the University of Southern California, I taught a course to graduate students on legal aspects of aviation safety.

Question. If confirmed as Deputy Administrator, you will be in a position to work with Administrator Engen in shaping the FAA. What do you believe should the priorities at the FAA be today?

Answer. I agree with both Secretary Dole and Administrator Engen that the FAA's first priority must be the promotion of aviation safety. This goal is paramount over all others. In addition to this objective, two other major priorities of mine are to increase the agency's responsiveness to all users, and to improve all facets of human resource management within in the FAA.

Question. The President's Fiscal Year 1986 budget proposes a number of legislative changes in the manner in which FAA programs are funded, administered and managed. One such change is the proposal to keep interest earned on Aviation Trust Fund balances in the general revenue fund. What role did you play in the formulation of this proposal? If enacted, do you believe there should be a corresponding reduction in aviation taxes?

Answer. I was not involved in developing the legislative changes proposed for the Airport and Airway Trust Fund. Nevertheless, I am aware that the President's budget does not recommend any proposed reduction in aviation taxes. I support the President's budget, which would continue in effect current tax levels to assure adequate funding of the national airspace system's needs.

Question. What is the status of the DOT proposal to transfer National and Dulles Airports to local control? Do you support such a transfer?

Answer. The DOT proposal has been undergoing review by interested agencies within the Executive Branch under the auspices of the Office of Management and Budget. I do not see a need for National and Dulles Airports to be managed by the Federal Government. Accordingly, I support the proposed transfer of these airports, which will provide the local community the opportunity to manage them in accordance with local needs.

Question. There has been much discussion in recent years on the possible defederalization of airports. The President's FY 1986 budget states that many of the larger airports "could be defederalized". What is your position on the concept of defederalization of airports?

Answer. At this time, I do not have a firm position on defederalization of airports. I intend to acquaint myself further with this issue as it is assessed as part of the FAA/DOT effort to develop proposed airport and airway legislation for the post-1987 time period.

Question. What is your position with respect to the possible imposition of passenger facility changes, or "head taxes", which are now prohibited by law?

Answer. At this time, I do not have a firm position on passenger facility charges, or "head taxes". I intend to acquaint myself further with this issue as it is assessed as part of the FAA/DOT effort to develop proposed airport and airway legislation for the post-1987 time period.

Question. As a former commercial pilot, do you believe there are adequate numbers of air traffic controllers in the system today? Should the FAA reconsider its decision not to hire those controllers who were fired as a result of the 1981 PATCO strike?

Answer. Having flown in the system many times since the illegal controllers' strike, let me first indicate my firmly held view that the air traffic control system is operating safely and has been throughout this period. Although total staffing levels are satisfactory, the number of operational controllers is lower than the optimal number. Training continues, of course, to increase the number of operational controllers in the system, and, from what I have observed, all indications are that solid progress continues to be made in system recovery. I do not believe that the FAA should reconsider the decision not to rehire the controllers who were terminated for striking against the government.

Question. In a 1984 FAA employee survey, it was determined that the areas most in need of improvement by the FAA focused on management skills. Specifically, these included human relations, management of change, concern for people, and organization of work. Apart from the steps being taken by Administrator Engen to address these problem areas, what recommendations could you make to ensure improvements?

Answer. As I indicated in my answer to question number 2, I believe that one of the top priorities of the agency should be the improvement of all aspects of human resource management. There are a variety of efforts underway within the agency to accomplish that objective. For example, teams have visited three FAA regions to determine why employees responded as they did to the survey, with particular emphasis being placed on areas identified as in need of improvement. Specific recommendations for improvement will result from this effort. We also have underway a pilot program to improve identification of people with supervisory potential in the air traffic field. If this program is successful, it will be implemented nationally. In short, there are a variety of programs initiated by Administrator Engen to address human resource management issues within the FAA. I am committed to assisting the Administrator in making progress in this critical area. I believe it will be a long-term effort that will require continued improvements in communications within the agency, enhanced supervisory selected systems, professional assistance and training, and, ultimately, holding managers accountable for their efforts in fostering good human resource management within their organizations. I believe it is also critical for top management from the Administrator and the Deputy Administrator on down, to be fully committed to the people side of the work equation. For my part, I intend to spend a substantial portion of my time working inside the agency to foster improved working conditions.

Question. Should the FAA be given the authority to allow the sale of airport slots? If so, how should the Federal government make airport slots available? In other words, should there be a lottery, or should they be given/sold to incumbent carriers?

Answer. On June 1, 1984, the FAA issued a Notice of Proposed Rulemaking on this subject. At issue in that proceeding are all of the questions which you have raised. For example, some commenters have submitted that the slots are the property of the local authority and should not be transferred by the Federal government. It would be inappropriate to comment further at this point, since my office will be involved in the administrative review of the issues contained in this rulemaking.

Question. In its report released last year on ways to reduce budget deficits, the Heritage Foundation proposed charging for utilization of the air traffic control system. What are your views on this proposal?

Answer. With the establishment of the Airport and Airway Trust Fund in 1970, user taxes paid into the Trust Fund are the means the Executive Branch and the Congress have agreed upon as the appropriate way to collect fees from users of the national airspace system. I believe that user taxes continue to be the appropriate means of recouping the costs of running the air traffic control (ATC) system. The President's budget contains proposed modifications to the Airport and Airway Improvement Act of 1982, as amended, to ensure that the appropriate amount of user fees, based on the level of non-government use of the ATC system, are indeed put toward the costs of running the ATC system.

Question. Last year, with the creation of the National Air Transportation Inspection Program, Secretary Dole increased the visibility of the FAA's field inspector workforce and emphasized its role in ensuring aviation safety. Recent commuter and charter aircraft accidents have kept continued attention on the working of these inspectors. In your opinion, are these inspectors performing to the maximum level of effectiveness? Should the size of the inspector workforce be increased?

Answer. I have not been associated with the FAA for a sufficient period of time to answer definitively whether inspectors are performing to the maximum level of effectiveness. I am aware that efforts have been underway for some time to "modernize" our inspection capabilities, through such means as automation, in order to increase the productivity and effectiveness of our workforce. To that extent, I believe that further improvements can probably be made, although I do not have specific suggestions at this time. Insofar as additional staffing is concerned, Administrator Engen has an effort underway to determine whether additional inspector staffing is needed to achieve necessary surveillance levels in the future.

Question. In questions submitted earlier by the Committee, you stated that you had "published a number of aviation law and aviation safety articles, which have appeared in various law reviews and aeronautical trade publications." Please provide for the Committee a complete list of those publications appearing in the last ten years.[1]

Question. What was your role as Chairman of Pilots for Reagan-Bush in 1984?

Answer. I was national chairman of the "Aviation Professionals for Reagan-Bush" in 1984. This organization was comprised of pilots, flight attendants, and others in aviation professional fields, who supported the reelection of the Reagan-Bush ticket. The group included state chairmen who, in turn, worked for the reelection of the National Republican administration.

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[1] The list is in the Committee files.

Question. In a letter to the Committee, dated January 28, 1985, the DOT Deputy General Counsel stated that it was your intention to divest holding in interests which have contractural relationships with or can be affected by the FAA (examples given included IBM, Xerox, Bell Atlantic). Please outline, for the committee, the status of these actions, as well as your timeframe for completing them.

Answer. On February 12, 1985, I divested myself of all holdings in interest referred to by the Deputy General Counsel of DOT in the letter to the Committee dated January 28, 1985.

Question. The same letter notes that you are entitled to compensation arising out of the court approved settlement in the case of *FFAC v. Lockheed, et al.* Please give the Committee some background on this case, your role in earning this compensation, and the amount you are owed.

Answer. My law firm and I were counsel for the infant plaintiffs in the case of *FFAC v. Lockheed, et al.* (United States District Court for the District of Columbia, C.A. #76-0544), which arose from the crash of a Lockheed C-5A aircraft near Saigon in the closing days of the Viet Nam war. The portion of the litigation to which I am entitled compensation involves the claims of children who survived the crash, and who had been adopted by parents who live outside the United States. In this litigation, the infants and their court appointed guardian ad litem were represented by another law firm which my firm had engaged for that purpose on a fee sharing basis. My law firm and I had been actively involved in the litigation for a number of years, and we made available to the successor law firm our efforts and work product for its use.

Since the now settled litigation involved the rights and claims of infants, the amount of the fees payable to the attorneys is determined by the court. The court has not yet rule on this point. Accordingly, the amount that I am owed cannot be determined at this time.

Question. What guidelines will you use in disqualifying yourself from matters before the FAA involving your former employer of 25 years, Eastern Air Lines?

Answer. I have notified my staff, the Chief Counsel, and the Administrator of the FAA, in writing, that I disqualify myself from participation in any particular matter in which I personally and substantially participated as an employee of Eastern Air Lines, Inc. In addition to this disqualification, I have retired from the employ of Eastern Air Lines, Inc., and have divested myself of any financial interest which I held in that company.

Senator KASSEBAUM. Mr. Jones, do you have any comments you would like to make?

STATEMENT OF RICHARD H. JONES

Mr. JONES. Yes, Madam Chairman, I have a few brief remarks.

I want to take this opportunity to thank the chairman and the members of the committee for giving me the opportunity to appear before you this afternoon in connection with my nomination for the position of Deputy Administrator of the FAA. I am gratified that the President saw fit to appoint me to this job and, if confirmed by the Senate, I will do my absolute best and utmost to perform the tasks associated with that job.

As Senator Warner has pointed out, I have been involved in aviation all my career. I was a military pilot, an airline pilot, and my law practice was centered on the aviation aspects of the law. So I have been involved in the aviation arena all my life, and I look forward to continuing that with the FAA.

My brief association with the Federal Aviation Administration has offered a new perspective and a new set of challenges which I welcome. I look forward to having the opportunity to work with Administrator Engen and the outstanding professionals in the FAA to further improve upon this Nation's outstanding aviation safety record and to continue to build upon the human resource management initiatives ongoing within the FAA. I also look forward to a close and productive working relationship with the members of this committee on these and other important aviation issues facing us today.

I am indeed happy to be here and I look forward to responding to any questions you have. Thank you again for the opportunity.

Senator KASSEBAUM. Thank you.

Senator WARNER. Madam Chairman, I think that we should take note that the Administrator, Admiral Engen, is present at the hearing, as well as the wife and family of the President's nominee.

Senator KASSEBAUM. It is a great pleasure to welcome them to the hearing.

Indeed, it is a challenging time at the FAA. We are pleased to have you willing to step forward because I do think that Admiral Engen has provided strong leadership at the FAA, and it will continue to be, as you mentioned, a challenge there as we address some very crucial problems in the rapid change that is taking place in aviation.

Some of these changes are reflected in the questions I would like to ask because recently there have been a lot of questions regarding aviation safety, and the FAA's investigative procedures, the white glove test, and so forth.

I wonder if you would care to comment on the inspection activity, if you feel that the inspection work force is adequate, being one question, and what other safety procedures might FAA be looking to at this time?

Mr. JONES. Thank you, Madam Chairman, I will be happy to respond to that.

I am of the firm belief that the aviation system of the United States is a very safe one. By any measure, by any standard, we have to conclude that it is. To say that it is safe isn't to say that the FAA should sit idly by and watch that magnificent safety record be eroded.

Under the leadership of Administrator Engen, who will shout from the housetops that aviation safety is his foremost goal, safety is indeed our foremost goal and he has asked me to assist in that regard, and I certainly want to do that.

The numbers of inspectors and the work force that we have in the field is a matter that is under study. You will recall that between the years 1979 and 1984 there were some 1,000 new commercial air carriers that entered the aviation and airline business in the United States, and certainly that created a challenge for our work force. That was recognized by the FAA last year when we increased the number of inspectors by 25 percent, and that may not be enough. Whether it is enough is a question that is under study right now. We are also looking to modernize our procedures and streamline the inspection procedures so that we get the most safety for our dollar.

I was going to say, I am satisfied that we have a safe system, but that is probably the wrong word because I think that we should never be satisfied with the level of our safety. It is never good enough, it always should be better. I am confident that the safety system that we have is the best that we could have. We will work to finetune it and make it better.

Senator KASSEBAUM. There have been efforts made to really more strongly enforce the guidelines that are already on the books as far as safety and violation of those safety procedures. Do you not think that strong enforcement of violations and the imposition of fines, and so forth, would be an asset?

Mr. JONES. Madam Chairman, I certainly agree, and Admiral Engen agrees. He has said several times recently in public pronouncements that the FAA means business. If an air carrier or a manufacturer or an airman sees fit to cut some corners, to take some latitude with the rules and regulations, then the FAA is going to come down hard on that air carrier or that airman or that aircraft manufacturer. The rules are there and the FAA is going to see that they are enforced.

Statistics are not the best gauge, but 16 airlines have either been grounded or had severe restrictions put on their operations by the FAA within the past 12 months, and that is almost unheard of. You used never to hear of an airline being given more than a slap on the wrist. But the FAA has taken strong steps to protect the safety of the aviation system.

Senator KASSEBAUM. Of course, it could mean that they are violating it more often.

Mr. JONES. Senator, that is always a possibility, of course.

Senator KASSEBAUM. I agree with you. I do think that it is important and I am pleased to see the FAA taking a firm hand in it at this point, in that direction.

I would like to ask a question regarding the scheduling agreement which the airlines entered into last year in order to avoid the delays that were occurring at the major airports, and that is due to expire in April. Has the FAA given any thought to ways to assist so that delays will not start occurring again, because I can foresee that this is going to be on the horizon.

Mr. JONES. Yes, Senator.

Senator KASSEBAUM. I don't know if you have had the opportunity to really look into that yet.

Mr. JONES. I have not been there long enough, certainly, to know all of the answers, but I do know that it is a question that is receiving full attention. The question of slots, for example, at airports is a matter of rulemaking right now. Comments are being received, and the FAA will take action on that subject in the near future.

It is a very, very complex question. The issue of airport capacity is vital to the question of capacity of the airways and the air transportation system. It may be, and there have been some suggestions to this effect, that the airlines will want to renew the agreement after April 1. It may be that other initiatives will have to be taken. The matter is under close study. The FAA is aware of what may happen on April 1. We are doing everything we can to prevent the congestion that took place last April.

I happen to have been flying as an airline captain last April, so I am familiar with that aspect of it, and I hope that the airlines and the airline passengers are not subjected to the delays. We will do everything we can to see that that does not occur.

Senator KASSEBAUM. That is what I thought. You are in the unique position to have seen it from the other side as well. Do you think that in any way the air traffic controllers are a part of this answer, and do you feel that the controller work force has been brought back to the levels it should be, or do you view that as being a significant factor in the delay problems?

Mr. JONES. Senator Kassebaum, I think we are at, in terms of numbers of air traffic controllers, about where we need to be. It is true that the experience level of some of the controllers is not as high as we would like it to be, but the numbers are there and the experience is coming. Every day, we are becoming more and more experienced.

I want to say, and I hesitate again to use the word "satisfied," but I remember that right after the strike in 1981 there were delays; yes, there were delays, but the system was safe. The air traffic control system is such that it can adjust to different kinds of situations.

That was a magnificent adjustment, as you will recall, and the history shows that the air traffic control and the FAA adjusted to the great reductions that they had in the workforce. So if they were able to do it in 1981, surely, we can do it in 1985 when we are back almost up to speed, and we are even well above the traffic levels of 1981 now, and at 102 percent, 105 percent, as the days go by, of last year's levels. So we are back, to coin a Vice President Bush phrase.

Senator KASSEBAUM. Do you happen to know, in numbers, how many air traffic controllers we might be short?

Mr. JONES. Senator, in all due respect, I don't think we are short. I think we are at the number that we need. It is a continuing subject of study, but we think we have all we need. We need a little more experience, but as far as the numbers are concerned, we have what we need at the present time.

Senator KASSEBAUM. This next question is really a very parochial one and relates to my own Kansas interests. I can't pass up the opportunity in a hearing to at least get you to focus on the question. As you know it has been rather controversial as far as the ILSs and the MLS's, and the requirements of installation. Many airports feel that the installation of the ILS's should continue even believing that there will be no need for an MLS at a particular airport. I am specifically thinking of, say, Dodge City, KS.

I wonder if you know, if not Dodge City in particular, if the FAA is contemplating moving ahead with the installation of the ILS?

Mr. JONES. The FAA at one time, as you know, thought that the best thing to do would be not to install any more ILSs because of the fact that the MLS's were around the corner. There has been some rethinking on that subject, and additional ILS's are now planned, at least tentatively planned.

Senator Kassebaum, I have to say, I may not be quite correct on all of my facts, and if I am not, I will correct it for the record. It is my understanding, while I can't speak for the good people in Dodge City, KS, and their ILS, I know that there are steps underway to have additional ILS's in some parts of the country as part of the on-going modernization plans of the national air space system.

Senator KASSEBAUM. I am pleased to hear that because I personally do feel that it is a wise reevaluation that will serve some areas very well.

As I am sure you are well aware, general aviation in particular has really taken its lumps recently and for all sorts of different reasons. It is one of the guidelines for the FAA to promote aviation. Perhaps the FAA could be more involved in a promotion of the aviation.

I had introduced legislation at one time which did address that. It never got very far and there were ramifications of it that the Department of Transportation questioned, and so forth. Do you feel that there is a role for the FAA to play today in helping us around the world and taking an active role in promoting aviation? This may be too broad a question, again, to put to you at this point.

Mr. JONES. Senator Kassebaum, I can enthusiastically answer that question in the affirmative. I think the FAA should do everything it can to promote general aviation, and United States' general aviation manufacturers in particular. I have not had the opportunity to study the legislation that you proposed, so I regret that I can't comment on that.

At the very least, when you think about it, providing the leadership throughout the world in safe general aviation transportation, and in my view we have the best aviation transportation manufacturers in the world, is what perhaps the FAA can do best, and we will do that for sure. General aviation is the heart blood of the aviation system in the United States and we give very close attention, and rightly so, to that aspect of the aviation system.

Senator **KASSEBAUM**. Thank you very much.

I certainly look forward to working with you, as will all of us here on the hill who are interested in the FAA and in aviation. I would like to ask that statements from Congressman Frank Wolf and Senator Paul Trible be made a matter of record at this point.

[The statements follow:]

STATEMENT OF HON. PAUL TRIBLE, U.S. SENATOR FROM VIRGINIA

Mr. Chairman, it's a pleasure to present to the committee Mr. Richard Jones, a native of Portsmouth, VA, who is the nominee for the position of Deputy Administrator of Federal Aviation Administration.

Mr. Jones will bring to this post considerable experience in aviation affairs. Mr. Jones is a former pilot who served as an officer with the United States Airline Pilots Association and as chairman of the Eastern Airline Pilots Association. In addition he served as a member of the Virginia Aviation Commission for eight years, two years as chairman of the commission. He also is a member of the advisory board of the Smithsonian National Air and Space Museum.

Since December 11, 1984 Mr. Jones has been serving as the Deputy Administrator of the FAA as a result of a recess appointment by the President.

Mr. Jones is a graduate of VA Polytechnic Institute in Blacksburg, VA and holds a J.D. degree from the American University Law School.

Mr. Chairman, Richard Jones.

STATEMENT OF HON. FRANK WOLF, U.S. REPRESENTATIVE FROM VIRGINIA

Madam Chairman and Members of the Committee, I appreciate the opportunity to appear before the subcommittee today in support of the nomination of Richard H. Jones to be Deputy Administrator of the Federal Aviation Administration.

It gives me great pleasure to urge the early confirmation of my fellow Virginian, Dick Jones, for this important post. His background is uniquely well suited for the position of Deputy Administrator. He is experienced in virtually all facets of aviation, having served as a pilot for over 30 years in both civil and military aviation. For 26 of those years, he served as an airline pilot. He has served in important positions both with the Flight Safety Foundation International and Air Line Pilots Association. His experience as an attorney specializing in aviation has provided him with further perspective concerning the organizational framework and enforcement and licensing practices of the FAA and National Transportation Safety Board. He has written extensively concerning aviation safety and aviation law and has been active with various Bar Association committees focusing on aviation law.

Everything in Dick Jones' background suggests a man who is dedicated to aviation and committed to the advancement of aviation safety. He has served the Commonweath of Virginia well as a member of the State Board for Community Colleges and as a member and chairman of the Virginia State Aviation Commission. There is no question in my mind that, as Deputy Administrator of the FAA, Dick Jones will show the same dedication in serving the national interest.

Again, I recommend your early confirmation of Mr. Jones to be Deputy Administrator of the FAA and thank you for the opportunity to speak in his behalf.

Senator **KASSEBAUM**. It is a great pleasure to have you here today, and we assure you that we will take under the most expeditious circumstances your confirmation, and we welcome you to the FAA.

Mr. **JONES**. Madam Chairman, may I take the privilege of introducing my wife, Ann, my daughter, Ginger, and my son, Fraser Jones.

Senator **KASSEBAUM**. It is nice to welcome you here because I am sure you get very involved, and will continue to be, in all of the issues that come before the FAA. As you say, it is a very exciting time, I think, to be a part of the airway systems plans and all of the developments that are taking place in order to meet the rapidly expanding technology for us in aviation. You may wish you were piloting again.

Mr. **JONES**. It is entirely possible.

Senator **KASSEBAUM**. That concludes the hearing.

[Whereupon, the committee was recessed.]

[The following information was subsequently received for the record:]

QUESTIONS OF SENATOR EXON AND THE ANSWERS

Question. If confirmed for the position of Deputy Administrator, what initiatives will you undertake at the FAA?

Answer. As Deputy Administrator, my statutory responsibilities are to act for the Administrator when he is absent or unable to serve, or when the office of the Administrator is vacant, and to carry out duties and powers prescribed by the Administrator. Therefore, the functions I perform as Deputy Administrator will largely be in response to initiatives of the Administrator. As I indicated in response to questions by Senator Hollings, however, I believe that the FAA should continue initiatives to address three basic priorities: improvements in aviation safety; increased responsiveness to all users; and improvement of human resource management within the agency.

Question. What specifically will be your responsibilities as Deputy Administrator? Since you began your term of service as a recess appointment, what have been your responsibilities? Have you and Administrator Engen discussed a division of duties?

Answer. As indicated in my response to question 1, the Deputy Administrator's role is to perform those duties assigned by the Administrator. During my short tenure with the FAA. I have been involved in a variety of activities within the FAA. The Administrator has not delineated specific functions which are to be my primary responsibility. However, our discussions indicate that I will work closely with him on a continuing basis, and that I will be involved in virtually all aspects of the agency's functions. Much of my efforts will be associated with internal management of the agency. In that regard, I expect to be integrally involved with the agency's human resource management initiatives.

Question. In what ways do you believe the FAA could improve the efficiency and effectiveness of bringing on and training new air traffic controllers?

Answer. FAA is currently examining ways to improve the recruitment of controllers. Possibilities under consideration include the use of trained recruiters and the establishment of a recruitment center in order to make the process more efficient. We are also reviewing the initial testing of controller candidates. Preliminary indications are that the aptitude test can be learned, and that the initial test score correlates best with actual controller abilities, in cases where a candidate takes the test more than once. Finally, we are looking at the screening/placement process to see if initial screening at the FAA Academy can be hastened, thus leaving more time for training. Candidates sent to the field would, therefore, be more advanced, expediting field training as well. I believe these assessments will give us a reasoned approach to improving the efficiency and effectiveness of controller recruitment and training.

Question. Mr. Jones, last year several Members of this Committee, along with our colleagues in the House, developed conference report language which "directed" the FAA to adopt an alternative approach in dealing with the regulation of aircraft fueling. Yet, we have been told that the FAA has sent to DOT a Notice of Proposed Rulemaking that continues and even makes more specific an airport's responsibility for fueling. This is despite the fact that airport executives do not have any expertise in aircraft fueling, the FBO's employees and safety procedures are not under an airport's control, and airports are not responsible for any other areas of airport safety. Do you believe FAA should ignore congressional direction in this matter?

Answer. I believe the FAA should always be sensitive to Congressional concerns. While I have not been involved in the development of a Notice of Proposed Rulemaking concerning aircraft fueling operations, I would stress that any issuance by the agency concerning this issue would be in the form of a proposal not a final rule. Therefore, airport operators would be afforded a full opportunity to offer any concerns they may have regarding this issue, and any concerns about the consistency of the action proposed with legislative authority or intent could be fully aired as well during this process. The intent of a Notice of Proposed Rulemaking is, of course, to solicit views from all segments of the interested public so that any prospective safety action which may be taken will be a balanced one that considers all aspects of the action proposed.

Question. It was recently reported that the Department of Transportation would eliminate the current restriction on the number of passengers using National Airport, in an effort to gain support for its proposal to transfer National and Dulles Airports to local control. In your opinion, would it be in the interest of safety to remove the passenger ceiling at National?

Answer. The passenger cap which has been in effect at National Airport is not related to airport safety, since our air traffic system is designed to only permit the number of aircraft operations which can be safely handled. Instead, the passenger cap was promulgated by the agency as a means of controlling operations at National for reasons other than safety.

Question. In late 1981, the FAA chartered its multiyear plan for modernizing and improving air traffic control and airway facility services. Do you agree with the general direction of the plan and do you believe there is a need for significant program or staffing changes?

Answer. I agree with the FAA efforts to modernize the airport and airway system, and do not at this time see the need for any major structural changes to the direction the Plan has followed. We are now in the process of updating the National Airspace System Plan and will report to the Congress on any program changes necessitated in the Plan.

Question. What is the status of FAA's plan to contract out air traffic control services at low-activity control towers? As a former pilot, do you see any signficant problems with this proposal?

Answer. There are currently 15 locations in the pilot program for contracting out low-activity towers. Twelve of these are already under contract, and three are in the negotiation stage. FAA has developed an overall proposal on this program which is currently under review within the Department. I do not see any significant problems with the efforts to contract out low-activity towers, as long as control is exercised to the extent necessary to assure compliance with Federal standards and practices. In fact, there have been non-federal towers in the system for 20 years, and we have had problems with them because FAA certifies and monitors the controllers who staff these towers.

Question. Last year, Congress approved limited exemptions to FAA noise regulations for State I four-engined aircraft that were scheduled to go into effect on January 1, 1985 for non-compliant aircraft at Miami, Florida, and Bangor, Maine. Since that time, the FAA has been considering a number of exemption requests. What role, if any, have you played in handling these requests for exemptions? What are your views on the granting of future exemptions to aircraft noise abatement standards?

Answer. I have not been involved in the noise rule exemptions. My views on this issue are that the FAA should continue to assure that the exemption process tracks the underlying legislative authorities. Since the Federal Government is currently being subjected to extensive litigation over the issue of noise exemptions, it would not be appropriate for me to elaborate further on this issue.

Question. What do you see as the appropriate role for the Federal Aviation Administration in regulating cabin safety? In your opinion, what new initiatives in cabin safety should the FAA pursue?

Answer. I believe that the FAA must continue to have a major role in regulating cabin safety, working, of course, with manufacturers, operators, air crews, and members of the traveling public. At this time, I have no additional, proposed initiatives for the FAA to take in this area since there already is in place a comprehensive cabin safety program which is now achieving short-term results in a number of areas, and laying the foundation for accomplishing longer-term objectives.

Question. What role do you think the FAA should have in providing adequate flight information services to pilots? Do you support the idea of contracting out services now performed by the FAA Flight Service Stations?

Answer. The FAA, at the request of the Office of Management and Budget, is looking at the issue of private organizations providing flight services to pilots. Administrator Engen has made it clear that the study is just that, a study. We currently have no fundamental changes planned in the directions we have been pursuing with respect to providing flight services to pilots. I do not want to prejudge, however, the outcome of the pending study.

MARY L. AZCUENAGA TO BE COMMISSIONER, FEDERAL TRADE COMMISSION, AND CAROL G. DAWSON TO BE COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

TUESDAY, MARCH 5, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2:01 p.m., in room SR-253, Senate Russell Office Building, Hon. Robert W. Kasten, Jr., presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; David Zorensky and Chuck Harwood, staff counsels; Loretta Dunn and Amy Bondurant, minority staff counsels.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. Today, the Committee on Commerce, Science, and Transportation is considering two nominations which have been submitted to the Senate by the President. The first is that of Mary Azcuenaga to be a Commissioner of the Federal Trade Commission, and the second is that of Carol G. Dawson to be a Commissioner at the Consumer Product Safety Commission. Both nominees currently are serving as Commissioners at respective agencies by recess appointments.

The President has nominated Mary Azcuenaga for a full 7-year term to fill the seat on the FTC vacated by Michael Pertschuk in September 1984. She is a graduate of Stanford University and the University of Chicago Law School. Since her graduation from law school in 1973, she has spent her entire professional career at the FTC.

Prior to her recess appointment as Commissioner in November, 1984, she was assistant general counsel at the Federal Trade Commission. She has worked in various other staff positions, including that of Assistant Regional Director of the FTC's San Francisco office. In 1982, she received the FTC Chairman's Award.

Mary, we are happy to welcome you. The answers which you have submitted to written questions sent to you prior to this hearing by the committee will be made a part of the record, along with your biographical sketch.

[The material referred to follows:]

Biographical Sketch of Mary L. Azcuenaga

Address: 5100 Manning Pl., N.W., Washington, DC. 20016.

Date and place of birth: July 25, 1945, Council, Idaho.

Education: University of Chicago Law School, September 1971 to June 1973, J.D. awarded June 1973; Loyola University of Chicago School of Law, September 1970-June 1971 (first year of law school); Stanford University, September 1963 to June 1967, A.B. awarded June 1967.

Employment record (full time employment since college): Commissioner (by recess appointment) Federal Trade Commission, November 27, 1984 to present; Assistant General Counsel for Legal Counsel, Office of General Counsel, Federal Trade Commission, January 1983 to November 27, 1984 (Acting, January to April 1983); employed at the FTC since 1972.

Questions of the Majority and the Answers

Question. What do you perceive to be the major shortcomings, if any, of the Federal Trade Commission today? Please be specific.

Answer. The Commission's substantive trade regulation rulemaking mandate and the process by which it is given effect, in my opinion, have not worked well in practice. Very significant resources have been invested in various rulemaking proceedings only to have the resulting proposals rejected, at a later stage, either by the Commission, the courts or the Congress. Efforts should be made to improve the efficiency of the Commission's rulemaking process and, thereby, to make it more effective.

In addition, much of the law under the Federal Trade Commission Act and other statutes the Commission enforces, especially the Clayton Act, has emerged from case by case development. The case by case process, although essential to the evolution of the law, often leaves the precise content of legal obligations obscure. Such obscurity can lead to significant costs for those who seek to conform their conduct to the law. Businessmen, for example, may have to pay for complex legal advice and, with or without such advice, may feel compelled to read into the Commission's decisions obligations that exceed what the law actually would require and to forego perfectly lawful and procompetitive conduct. The costs of uncertainty may also extend to consumers, to the extent that they lack information about their rights under the law or to the extent that businesses forego competitive practices that would operate to their benefit. These uncertainties can never be removed altogether. I believe, however, that the Commission should continue its efforts to clarify and explain the principles it considers in applying the law.

Question. What areas of present FTC activity do you believe should be given the highest priority? Please specify the reasons for your choice.

Answer. In the area of consumer protection, priority should be given to activities designed to find and eliminate consumer fraud and deception—particularly as they affect vulnerable or disadvantaged groups—to encourage the dissemination of useful, accurate product information, and to monitor and enforce the Commission's special statutes. In the area of competition, the Commission should continue its strong enforcement efforts designed to prevent collusive activity that results in higher prices, diminished output, reduced quality or variety of goods and services and predatory conduct by a single firm aimed at obtaining market power. The Commission should monitor closely acquisitions, joint ventures and vertical restraints and vigorously prosecute those likely to impair competitive market performance. The Commission should continue to advise federal, state and local governments with respect to the competitive implications of various legislative and regulatory restrictive that may bear on the functioning of the market. To encourage compliance with the laws and regulations the agency enforces and to inform consumers of their rights, the Commission should continue to emphasize its consumer and business education program. This combination of activities is well designed to promote competition in the market and to protect consumers in their selection of goods and services.

Question. Are there particular FTC activities that you believe should be redirected or discontinued? Please specify.

Answer. I have not identified any particular FTC activities now in progress that should be redirected or discontinued.

Question. Are there any areas in which you think the FTC Act should be amended in order to enhance the FTC's ability to enforce its mandate? If so, what are those areas and what changes do you recommend? Are there any areas that should be cut back, transferred, or redefined through legislation? What about other statutes administered or enforced by the FTC?

Answer. As indicated in my response to question 1 above, the Commission's substantive trade regulation rulemaking mandate and its implementing procedures have proved cumbersome and inefficient. I believe the rulemaking process can be improved. It may be possible for the Congress or the Commission itself to establish standards specifically defining the circumstances in which substantive rulemaking makes sense. It may also be possible to define the nature and scope of injury that must be shown. The establishment of such standards would provide greater direction for the process and would tend to assure that the Commission and the Congress ultimately would consider particular rulemaking endeavors worthwhile. I would also favor attempting to redesign the Commission's rulemaking procedures to provide more initial and ongoing guidance to the staff, to make the process less burdensome and to make the rulemaking record more manageable.

As a general matter, I believe it is essential to continue to clarify the conduct that will be considered unlawful under the Federal Trade Commission Act an other statutes the Commission enforces, but I have no specific proposals to change these statutes at this time.

Question. Critics have sometimes asserted that there is no need for two antitrust agencies—the Federal Trade Commission and the Justice Department. What is your view?

Answer. I know of no formula for determining an institutional structure that will optimize antitrust enforcement, but the present division of responsibility and the liaison agreement between the Justice Department and the Federal Trade Commission appear to work well. In view of this, I see no need to consolidate all antitrust enforcement authority in either of the two agencies.

To some degree, the functions of the two agencies now complement rather than duplicate each other, and it may be useful to consider taking greater advantage of the agencies' differing characteristics. For example, the Antitrust Division, with its ability to seek criminal sanctions, is particularly suited to dealing with hard-core cartel behavior. The Federal Trade Commission, on the other hand, has greater flexibility than busy trial courts to address complex economic arrangements in a careful and detailed way to determine whether, on balance, their impact is anticompetitive.

Question. What areas of the FTC's antitrust enforcement authority would you emphasize and which would you deemphasize? Why? In your answer please specifically address enforcement in the areas of: (a) Conglomerate and vertical mergers; (b) Vertical non-price restrictions; (c) Resale price maintenance; (d) Predatory pricing; and (e) Price discrimination.

Answer. The Commission has a clear obligation to enforce all the laws for which Congress has given it responsibility. At the same time, however, the Commission's resources are finite and it must establish enforcement priorities. As a general matter, I believe the Commission should not devote its resources to practices that, if harmful at all, would be likely to harm only individual firms. Such practices often can be addressed in private actions. The Commission's limited enforcement resources should be devoted primarily to those violations most likely to have a significant adverse effect on the competitive functioning of markets and thereby on consumer welfare, the basic Congressional concern underlying the Commission's statutory responsibilities. With specific reference to the subjects identified in the question:

(a) Conglomerate and vertical mergers: Although the Commission should continue to monitor conglomerate and vertical mergers, particularly in highly concentrated markets, I would expect that the need for enforcement activity in this area would continue to be less substantial than in the area of horizontal mergers.

(b) Vertical non-price restrictions and resale price maintenance: Vertical non-price restrictions and resale price maintenance can have adverse effects on competitive market performance. Such harm is likely, for example, where the restraint is used to facilitate collusion among firms at the same level in the distribution chain, or to foreclose competitors' access to an adjacent market. It is important to detect and to bring enforcement action against such anticompetitive conduct.

(c) Predatory pricing: With respect to predatory pricing, the critical task is to distinguish pricing strategies designed to drive competitors from the market in order to capture a sustainable monopoly position from pricing strategies that are merely competitive responses to market forces. It is essential for the Commission to distinguish between these two situations in order to avoid bringing enforcement actions that would deter competitive conduct.

(d) Price discrimination: It is important for the Commission to maintain a presence in enforcing the laws against price discrimination. I believe, however, that in this area, as in others, the Commission should concentrate its resources where the unlawful practices adversely affect not only individual firms but also consumers.

Question. What authority should the FTC have over state regulated professionals? In your answer please indicate whether you regard the FTC's "Eyeglasses II" rulemaking proceeding as a proper exercise of such authority.

Answer. The Commission should have jurisdiction over the business or commercial activities of state-regulated professionals, but it should not become involved in determinations regarding professional competence and standards of practice for professionals. Those areas are properly left to state regulation. I support the Commission's programs with respect to state-regulated professions, and I believe it would be proper for the agency to exercise its authority in this area in an appropriate rulemaking proceeding. The "Eyeglasses II" proceeding has been in progress for several years. The vote to publish the notice of proposed rulemaking for "Eyeglasses II" occurred two days after my recess appointment to the Commission, and I did not participate. Because the results of the notice of proposed rulemaking in "Eyeglasses II" have not yet been reported to the Commission and will not be for some time, I have not had occasion to study the various reports, memoranda and other material in the rulemaking record. I am unable, therefore, to state a conclusion about the merits of the proposal at this time.

Question. What statutory changes would you suggest, if any, in the FTC's authority to prohibit unfair and deceptive advertising?

Answer. It is important to specify for those who are subject to the Commission's jurisdiction what conduct constitutes unfair and deceptive advertising under Section 5 of the FTC Act. Confusion about and ambiguity in the law may be costly to those who, in seeking to abide by the law, may restrict their actions more than the law requires, more than their competitors and more than may ultimately benefit consumers. In issuing its recent policy statements on unfairness and deception, the Commission has attempted to provide needed guidance. Both of these policy statements are theoretically sound, although they have not been in place long enough to allow an assessment of their effectiveness. Accordingly, it may be useful to gain experience with the Commission's statements rather than to amend the law at this time. Either Congress or the Commission can contribute to clarifying the law. Although I am not now proposing any statutory changes in the FTC's authority to prohibit unfair and deceptive advertising, if there is interest in the Congress in such a change, a statutory clarification would be consistent with my general interest in eliminating ambiguity in the law.

Question. Do you believe the FTC's program in the area of advertising substantiation has been effective? What changes, if any, do you believe should be made in such programs?

Answer. I support the FTC's advertising substantiation program and believe that it has been important in encouraging the dissemination of truthful information to consumers. Recently, the Commission completed a thorough review, including the solicitation of public comment, of its advertising substantiation program. As a result of that review, the Commission issued a policy statement in which, among other things, it articulated the circumstances in which it will consider post-claim evidence and announced a change in the procedures it uses for obtaining substantiation. I see no need for further changes in the program at this time.

Question. Should FTC rules be subject to systematic Congressional review? What specific form should such a review take?

Answer. Congress has ultimate legislative authority and, to the extent that it has delegated limited authority to the Federal Trade Commission to promulgate substantive rules, Congress has the authority to review those rules. I would support a constitutional arrangement that provides for systematic Congressional review of Commission rulemaking. I also would support legislation clearly specifying the limits on the delegation of rulemaking authority to the Commission and the standards by which Congress wants that authority exercised. As indicated in my response to Question 4 above, I believe the Commission should also try to organize the rulemaking process to provide more specific guidance to the staff as to whether particular rulemaking initiatives are worth pursuing and how the rulemaking record should be developed. Neither the Congress, the Commission nor the public is served by thepresent system in which very substantial resources my be invested in the development of proposed rules that ultimately are rejected altogether either by the Commission or by the Congress.

QUESTION OF THE MINORITY AND THE ANSWERS

Question. What percentage of the FTC budget should be devoted to economic research both in-house and through consultants that is not related to law enforcement work? What do you feel is the role of economic research that is not tied to specific cases in this time of budget cutting? Should the federal government fund non-law enforcement research that could be performed in the academic community?

Answer. The FTC should fund economic research only when it is relevant to the Commission's mission and, in this time of budget cutting, particular emphasis should be given to law enforcement related research. Under section 6 of the FTC Act, the Commission is charged with the responsibility of gathering and compiling a broad range of information on the market. Work that is produced under this authority, although not always case-specific, may provide useful information with respect to general policy concerns of the Commission. This work may also result in industry studies, such as the recent oil industry merger study requested by the Congress, that prove to be useful in subequent enforcement matters. To the extent that economic research related to the Commission's mission is being performed in the academic community or can be encouraged successfully to be performed there, the government should not fund it.

Question. Should the FTC have jurisdiction over local governments?

Answer. As a general matter, I believe that local government is to be strongly preferred for local matters and that the Federal Government should intervene only when it is essential to protect consumers. In the Local Government Antitrust Act of 1984, the Congress has struck what appears to be a reasonable balance between the need to insulate local taxpayers from burdensome damage verdicts and the need for the continued presence of the antitrust laws as a check on possible anticompetitive activity.

Question. In your opinion, would an ad be "unfair and deceptive" under the FTC Act if it said "Drive and Drink." Please explain. Does the FTC have authority to ban alcohol advertising? Should such advertising be banned? Does the FTC have authority to require counter advertising in the area?

Answer. Under section 5 of the FTC Act, an advertisement may be unfair if it will cause substantial and unavoidable injury to consumers without providing countervailing benefits to competition. Deception occurs if there is a material misrepresentation, omission or practice that is likely to mislead consumers interpreting the advertisement in a reasonable manner. Before determining that a particular advertisement is either unfair or deceptive and unlawful under section 5, one should examine the advertisement as a whole. An advertisement that simply states "Drive and Drink" may be actionable under an unfairness theory and might even be susceptible to challenge under a theory of deception. Of course, it is impossible to answer a hypothetical question with any certainty, absent the surrounding facts.

Under its current appropriation, the Commission has no authority to propose a trade regulation rule with respect to commercial advertising on the basis that it is unfair. The Commission has the authority, and has used the authority, to ban certain discrete ads found to be unfair or deceptive. The Commisssion may have the authority to prohibit a generic variety of advertising such as media ads for wine and beer, but it should do so only if it can establish clearly the need for such a prohibition in light of the nature of the advertising claims and the resulting consumer injury and if it determines that no less restrictive approaches are available that would adequately remedy the problem. Even if it has the requisite authority, however, I believe that the Commission should approach generic advertising bans with great caution. Because of the serious ramifications of such bans and possible constitutional questions, it may be, as a matter of policy, that such bans should be imposed, if at all, only by the Congress. The Commission has the authority to require counter advertising in appropriate cases.

Question. The Distributional Restraints Program in the competition mission at the FTC received a more significant budgetary decrease in the recent budget submission than other programs at the FTC. Does this send a signal that these cases are viewed less critically? Does this decrease general deterrence?

Answer. I strongly believe in a visible enforcement presence in the distributional restraints area, and the fiscal year 1986 budget submission is fully consistent with this objective. Although the budget shows a decrease of three work years, substantial resources are still budgeted for the Distributional Restraints Program. As I understand the programs in the Commission's competition mission, the line between the Horizontal Restraints and Distributional Restraints Programs is not a sharp one, and it is not unusual for an investigation of a vertical restraint with alleged anticompetitive horizontal effects to be classified as a horizontal restraint. To the extent that this occurs, budgetary projections for the Distributional Restraints Program would understate the Commission's enforcement resources in this area.

Question. How do you intend to avoid improper ex parte communications?

Answer. It is, of course, very important to avoid improper ex parte communications. I will continue to follow the Commission's rules in this regard scrupulously and will seek the advice of the Commission's general counsel when necessary.

Question. What is your view as to how the Commission has used its authority under the "unfairness" doctrine with respect to unfair or deceptive acts or practices and unfair methods of competition?

Answer. The theory of unfairness is an important aspect of the Commission's authority. I believe that the Commission's enforcement policy statement on unfairness provided important clarification of what constitutes a violation of section 5 of the FTC Act under this theory. Two of the Commission's trade regulation rules, the credit practices and used car rules, and, recently, the final opinion in the *International Harvester* case, relied on the unfairness theory. Although I took no part in these decisions of the Commission, I fully support the Commission's efforts to eliminate unfairness in the marketplace.

Question. Would you favor a proposal to have FTC unfair method of competition cases tried before Federal judges?

Answer. I believe that the current procedure of trying FTC competition matters in an administrative forum provides certain advantages. For example, it allows greater flexibility than the court system to address complex economic arrangements in a detailed way. This flexibility may also be enhanced by the character of the FTC as an agency having a well developed body of legal and economic expertise which, as originally contemplated by the Congress in establishing the Commission, may be brought to bear in carrying out its enforcement mission. I am interested in continuing the Commission's efforts to streamline the administrative process. If confirmed, I would work to make the adjudicative process run more smoothly and efficiently without jeopardizing the procedural protections to which respondents are entitled. I have reached no firm conclusions regarding the merits of trying competition cases before Federal judges.

Question. Do you think the "State Action Doctrine" applies to the FTC? (To unfair methods of competition and other cases dealing with unreasonable restraints on trade?)

Answer. Although I know of no instance in which the State Action Doctrine has been held specifically to apply to the FTC Act, I think that the reasoning of the cases in this area seems plainly to apply to actions of the Commission.

Question. Are there any areas in which you think the Federal Trade Commission Act should be amended in order to enhance the FTC's ability to enforce its mandate? If so, what are those areas and what changes do you recommend? Are there any areas that should be cut back, transferred, or redefined?

Answer. The Commission's substantive trade regulation rulemaking mandate and the process by which it is given effect, in my opinion, have not worked well in practice. Very significant resources have been invested in various rulemaking proceedings only to have the resulting proposals rejected, at a later stage, either by the Commission, the courts or the Congress. This inefficiency can be minimized. I believe it would be possible for the Congress or the Commission itself to establish standards specifically defining the circumstances in which substantive rulemaking makes sense. It may be possible, for example, to define the nature and scope of injury that must be shown. The establishment of such standards would provide greater direction for the process and would tend to assure that the Commission and the Congress ultimately would consider particular rulemaking endeavors worthwhile. I would also favor attempting to redesign the Commission's rulemaking procedures to provide more initial and ongoing guidance to the staff, to make the process less burdensome and to make the rulemaking record more manageable.

As a general matter, I believe it is essential to continue to clarify the conduct that will be considered unlawful under the Federal Trade Commission Act and other statutes the Commission enforces, but I have no specific proposals to change these statutes at this time.

Question. Does FTC enforcement of its operative statutes tend to aid, or does it hinder, the marketplace functioning of small business? Is the Commission moving in the right direction in this regard?

Answer. Because the goal of the laws enforced by the FTC is to keep the marketplace open to effective competition, appropriate FTC enforcement activity works to the advantage of small business. I support the Commission's enforcement efforts and its competition advocacy program, which are devoted in part to the elimination of unnecessary restraints on the entry of new firms into markets, and which allow small businesses to obtain the full benefit of their competitive advantages. The Commission's consumer and business education efforts supplement its enforcement program and facilitate compliance with the law, thereby helping businesses to avoid costly litigation.

Question. In early 1981, the administration advocated abolition of the FTC's antitrust jurisdiction, noting the Justice Department's concurrent authority. Do you believe Congress should consider abolition of the FTC's antitrust authority?

Answer. I know of no formula for determining an institutional structure that will optimize antitrust enforcement, but the present division of responsibility and the liaison agreement between the Justice Department and the FTC appear to work well. In view of this, I see no need to consolidate all antitrust enforcement authority in either of the two agencies.

To some degree, the functions of the two agencies now complement rather than duplicate each other, and it may be useful to consider taking greater advantage of the agencies' differing characteristics. For example, the Antitrust Division, with its ability to seek criminal sanctions, is particularly suited to dealing with hard-core cartel behavior. The FTC, on the other hand, has greater flexibility than busy trial courts to address complex economic arrangements in a careful and detailed way to determine whether, on balance, their impact is anticompetitive.

Question. Do you believe survey evidence is essential to show injury in rulemakings?

Answer. The Commission should promulgate rules only in those instances where a definite need has been demonstrated, a showing predicated in part on reliable evidence of significant consumer injury. A properly conducted scientific survey is one way of obtaining reliable evidence on which to determine the existence and extent of such injury. Reliable evidence may also consist of information based on expert testimony or other material from which general assumptions appropriately may be drawn. Survey evidence is valuable but not essential where equally or more reliable evidence is available.

Question. Do you believe that the cost and benefits of agency action are susceptible to mathematical quantification to the extend that costs can be weighted exactly against benefits?

Answer. I believe it is always useful to consider the costs and benefits, to the extent they can be estimated or established, of proposed agency actions, but such costs and benefits are not always susceptible to precise measurement.

Question. Should the FTC retain authority to include affirmative rules of conduct in trade regulation rules?

Answer. Yes, the Commission should retain authority to include affirmative rules of conduct in trade regulation rules but should exercise that authority only in those situations where a narrowly drawn rule can be shown to provide an effective solution to well defined and well established consumer injury caused by unlawful market practices.

Question. Do you support the per se rule of violation for resale price maintenance cases, which is currently the law set by the Supreme Court?

Answer. I am committed to enforcement of the law as established by the Congress and the courts and, as long as the current per se rule against resale price maintenance exists, I will enforce it. Recent empirical studies, however, raise questions concerning whether the application of the per se rule benefits consumers in all instances. I believe the issue warrants further study and anticipate that the Commission may be able to contribute to this work and report to the Congress. The per se rule for resale price maintenance is longstanding and provides clear guidance to the business community. To attempt to change the law in a manner that might not be sustained by the courts or accepted by the Congress would simply be to introduce uncertainty in the law, to no one's benefit. If the rule is to be changed, it may be most appropriate for such action to be taken by the Congress.

Question. On horizontal antitrust enforcement, the FTC transition report stated the Commission should: "Concentrate its resources on these horizontal collusion cases where injury is great and where the market will be slow to respond." Do you agree with that?

Answer. Yes. Although I am committed to enforcement of all the antitrust laws, I agree that the Commission should concentrate its resources in this area.

Question. Should sizable economic efficiencies be considered as part of the legal analysis of proposed horizontal mergers? As a defense?

Answer. I agree with the statement of the Federal Trade Commission concerning horizontal mergers in its treatment of efficiencies. Sizable economic efficiencies created by certain mergers can benefit consumers and therefore should be considered, along with evidence of possible anticompetitive effects, in evaluating a proposed merger. Because efficiencies that seem plausible in advance do not always actually take place, I would be interested in exploring ways to obtain more reliable evidence regarding the likelihood and scope of predicted efficiencies and ways to eliminate the analytical ambiguities associated with the issue of efficiencies. The role of efficiencies in merger enforcement warrants further study.

Question. The Supreme Court has recognized violations of the Clayton Act involving vertical mergers. Some economists have critized this approach to the Clayton Act because it does not acknowledge efficiencies that result from such mergers. What is your position on vertical mergers generally?

Answer. Vertical mergers, like other types of mergers, can sometimes create substantial efficiencies and sometimes have anticompetitive effects. Although vertical mergers are much less likely than horizontal mergers to present competitive problems, they can occassionally harm consumers by facilitating collusion among competitors in a market or by enabling regulated firms to evade rate regulation. I believe that the enforcement agencies should examine each proposed vertical merger to determine whether it may present such detrimental effects and, if so, should move swiftly to halt the merger.

Question. Do you support a clarification that the FTC's jurisdiction extends to the State-regulated professions? What about FTC jurisdiction over ethical rules promulgated and supervised by the State courts?

Answer. The Commission should have jurisdiction over the business or commercial activities of State-regulated professionals, but it should not become involved in determinations regarding professional competence and standards of practice for professionals. Those areas are properly left to State regulation. The FTC authorization legislation approved by the House and Senate Commerce Committees of the last Congress clarified the limits of the Commission's jurisdiction over professionals. The Commission agreed that this clarification was appropriate, and I share that view. Within those limits, apart from the State action issue, I generally would not differentiate among rules and regulations simply on the basis of which agency or institution was responsible for their issuance.

Question. How should the FTC evaluate an ad targeted at all consumers but relevant to a vulnerable group as well?

Answer. I believe that the Commission should be particularly careful to protect consumers who, for one reason or another, are particularly vulnerable to certain forms of unfair or deceptive advertising. Members of vulnerable groups may be less resistant to or less able to protect themselves against certain misleading advertising claims that might not influence the majority of consumers to their detriment. The Commission should be particularly attentive to identifying and protecting consumers who, because of various susceptibilities, may be particular targets for unscrupulous advertising.

Question. Do you believe that the Commission should abandon rulemaking or are there instances where rulemaking would be appropriate to deal with a clear industry-wide problem? If you believe rulemaking could be appropriate, please define the circumstances where you would favor such an approach.

Answer. As I have suggested in answers to earlier questions, I believe that rulemaking can be an effective and beneficial way to eliminate industry-wide deceptive behavior, ensure a free flow of accurate information to consumers or otherwise encourage proper functioning of the market. Although I have not developed specific proposals to define the circumstances under which rulemaking might be particularly appropriate, I believe that careful attention should be paid at the outset of any such endeavor to ascertaining whether the conduct to be addressed in the rule involves an unlawful practice that is harmful and widespread and to determining that no less intrusive remedy appears to be efficient or appropriate.

Senator KASTEN. It is my understanding that there may be statements that other members of the committee may wish to make. If they wish to make them, they can be included as part of the record.

It is my understanding that you have an opening statement which you would like to make, and we would like to hear from you at this time.

STATEMENT OF MARY L. AZCUENAGA

Ms. AZCUENAGA. Thank you, Mr. Chairman.

I would like at the outset to thank you for this opportunity to meet with you today and to answer your questions concerning my nomination to the Federal Trade Commission.

I am honored that President Reagan has chosen to place his confidence in me by nominating me to this position, and it is particularly gratifying to be given an opportunity to serve as a member of an agency where I have spent virtually all of my professional legal career.

As you know, since its establishment by Congress in 1914, the Federal Trade Commission has played a major role in preserving and encouraging competition, promoting the proper functioning of the market, ensuring the free flow of accurate market information, and protecting consumers from unscrupulous business behavior.

Its mission encompasses vigorous law enforcement, judicious exercise of regulatory authority, and compilation, analysis, and dissemination of information for the use of other Government agencies, the Congress, and the public.

All of these statutory functions of the FTC are in my view integral to the maintenance of a free and competitive market, and to the protection of consumers, particularly those consumers who are for some reason peculiarly vulnerable to fraud and deception.

My career at the Federal Trade Commission has provided me with a wide variety of experience. I began as a summer law clerk in the Commission's Bureau of Competition. After graduating from law school in 1973, I returned to the Commission as a staff attorney in the general counsel's office.

Since then I have held a number of jobs with the agency both in Washington and in the San Francisco regional office. I have served as a senior legal adviser to the Commission. I have engaged in both administrative and Federal court litigation, and in work involving the agency's administration and management.

I believe that my career at the Commission has given me a broad and solid grounding in the substantive mandate and the procedural workings of the agency. I have been serving on the Commission as a recess appointee for the past 3 months and I have found the experience challenging and rewarding.

Should you and your colleagues see fit to confirm my nomination, I pledge to support a vigorous FTC enforcement presence in both antitrust and consumer protection. I would also favor judicious use of the Commission's regulatory authority.

Finally, I believe in maintaining a strong economic research capability both to ensure reliable support for the Commission's enforcement and regulatory activities, and to provide useful information and focus for policy analysis designed to promote better understanding of the market. I would look forward to participating in these activities as a member of the Federal Trade Commission.

At this time, Mr. Chairman, I would be pleased to answer any questions that you or your colleagues may have.

Senator **Kasten**. Thank you for your statement.

I just have one brief question right now, and then I am going to ask if Senator Ford might have a question or two.

One of the things that this subcommittee is interested in, and one of the things that this committee hopefully will become interested in, is the FTC authorization or reauthorization bill.

I just wanted to ask you, as someone who has been at the agency, what effect has the lack of an FTC authorization had on staff morale and the effectiveness of the agency, as well as on the public perception of the Federal Trade Commission's exercise of its authority.

Ms. AZCUENAGA. Mr. Chairman, I do believe there is an effect on the morale of the staff at the agency. I think it is hard to quantify that effect. Commission employees are very aware that we have no authorization bill, and I think there is a feeling of some uncertainty and concern about the extent to which the Congress is behind all of our activities. It does have an effect, so I would support your efforts to pass an authorization bill in this Congress. If you and your colleagues see fit to confirm my nomination, I would be more than happy to assist you in any way in that endeavor.

Senator KASTEN. Senator Ford.

Senator FORD. I have a couple of questions that I would like to ask you, if I may.

Under your current appropriations and the authorization bills from the last two Congresses, the FTC was prohibited from proposing a rule with respect to commercial advertising on the basis of unfairness. In your written response to prehearing questions, you said that the FTC, and I quote, "may have" the authority to prohibit a generic variety of advertising such as media ads for wine and beer. Would you please explain your position?

Ms. AZCUENAGA. Yes, Senator Ford. I agree that the agency does not have authority to impose such a rule based on an unfairness theory. The only basis on which it could possibly impose such a rule would be based on deception theory.

I would certainly add, however, that a generic ban on advertising in my view is a very serious matter. The agency, to the extent that it has prohibited advertising in the past, has done so only in particular cases where a particular advertisement has been shown to be unfair or deceptive. I would approach any such generic ban with extreme caution. Indeed, even if the record showed that under a deception theory, it might be possible for the agency to impose such a generic ban on beer and wine advertising, I believe that as a matter of policy, it might be better to leave such an action to the Congress rather than to leave it with the regulatory agency.

Senator FORD. I appreciate your leaning or tilting toward the Congress.

Your prehearing responses criticize the trade regulation rulemaking process, a process Congress criticized and then amended with the FTC Improvement Acts of 1980, the last authorization bill to become law. What specific changes do you recommend?

Ms. AZCUENAGA. I have not prepared specific changes but there are some general areas in which I think changes can and should be made.

As you know, because you have read my prehearing responses, I believe that the rulemaking process as it has worked in practice has proved to be a tremendously cumbersome and inefficient process. Because many of the proposed rules that have come out at the end of that process have been rejected either by the Commission or by the Congress, I believe that the process is not sufficiently focused at the outset.

I would support a change in the Commission's trade regulation rulemaking authority that defined the circumstances very clearly in which Congress would like the agency to engage in rulemaking if that can be done. I would also support a change that says that the evidence upon which a rule can be promulgated should be reliable evidence of some sort.

I would also support a change that attempted to improve on the procedures in the rulemaking process. I think that can be done either by the Congress or the Commission. In the statute, for example, informal rulemaking hearings are mandatory, and I would prefer to see that changed to an optional process.

There are a few technical changes in the statute that I have encountered during my years at the agency that I think need to be cleaned up, most of which are minor and over which I think very few people would have any dispute. Those are some of the areas that I would like to see the Congress at least consider.

Senator FORD. Would you consider recommending to the subcommittee those housekeeping chores you think we could do that would help improve it, and not receive any objections?

Ms. AZCUENAGA. I would be more than happy to do that, Senator Ford.

Senator FORD. Anything that we can eliminate, the better off we will be. The better we can streamline it, the more efficient we can be, the better and greater job we can do. If it is streamlined, we will have a lot of people screaming, yelling, and gnashing of teeth that we are moving too fast. Those who are opposed to it would not like it, and those who are for it would be tickled to death. You know the position that we are all in, I think.

What is your view as to how the Commission has used its authority under the deception doctrine with respect to unfair or deceptive acts or practices, and do you support a statutory definition of deception as proposed by Chairman Miller?

Ms. AZCUENAGA. Senator Ford, I agree with the Commission's recent policy statement on deception. I believe that was a very useful attempt to provide guidance to those who are subject to the Commission's jurisdiction with regard to what the Commission actually considers to be a violation under a theory of deception.

That policy statement doctrine has not been in place very long, and I would like to see it applied to various factual situations. I am not here today to propose a statutory change embodying the deception statement, but if there is interest in the Congress in doing so, that would not be inconsistent with my view that the law should continue to be clarified.

Senator FORD. I have no further questions.

Senator KASTEN. I have a couple of other questions, but I prefer, in the interest of time, to submit them for the record. Thank you very much for your testimony here this afternoon, and we look forward to working with you. We appreciate your testimony.

Ms. AZCUENAGA. Thank you.

[The following information was subsequently received for the record:]

POSTHEARING QUESTIONS OF SENATOR KASTEN AND THE ANSWERS

Question. What do you think the Commission should do to inform consumers about the dangers of so-called "smokeless" tobacco?

Answer. Last year, the Center for Science and Health Research petitioned the Commission to promulgate a rule requiring makers of smokeless tobacco products, such as snuff and chewing tobacco, to include health warnings on their packages. A similar petition was filed with the Food and Drug Administration. Because a determination of the existence and extent of health hazards posed by smokeless tobacco would require an evaluation of extensive scientific evidence, the Commission recently voted to request the Surgeon General to study the question and advise the Commission on his findings. I agreed with this request. After the Commission receives the Surgeon General's assessment of the scientific evidence, it will decide what, if any, action is appropriate.

Question. What role do you see the FTC playing in Government efforts to eliminate commercial counterfeiting?

Answer. The growing problem of commercial counterfeiting is a serious concern. Commercial counterfeiting hurts not only individual businesses whose products are counterfeited, but also consumers who buy inferior or falsely labeled goods. It adversely affects the market by undermining consumers' confidence in product information and by reducing businesses' incentives to maintain the quality of their goods.

These cases, however, have proved to be difficult for the Commission to investigate, because it has no criminal authority with its attendant special investigational powers and no authority to police imports by port of entry inspections. As in other fraud cases, the perpetrators may be engaged in criminal activity, and they tend to move around to avoid detection, to hide their assets or to seek refuge in bankruptcy. Nonetheless, when the Commission is able to identify unlawful practices in this area, it should take prompt enforcement action and should seek injunctions, including, where necessary, asset freezes to preserve funds for consumer redress.

Question. As you know, the Department of Justice recently issued guidelines concerning nonprice vertical restraints. What is your opinion of these guidelines.

Answer. The guidelines recently issued by the Department of Justice concerning nonprice vertical restraints do not purport to change existing law, but rather to provide a useful analytic framework for evaluating the likely competitive effects of such restraints. As indicated in my earlier responses, I favor efforts by enforcement agencies to clarify the law and to explain the enforcement standards they apply. Such advice should reduce costly uncertainty for those who are subject to the jurisdiction of the antitrust enforcement agencies and promote compliance with the law. The guidelines are a good example of this approach. Experience under the Vertical Restraints Guidelines will reveal how useful they are in various factual situations.

Question. What role do you believe the FTC should play in consideration of industry-wide restrictions on the advertisement of beer and wine?

Answer. The Commission has the authority, and has used the authority, to ban certain discrete advertisements found to be unfair or deceptive. If a particular advertisement for beer or wine makes a material misrepresentation or omission that is likely to mislead reasonable consumers or unfairly induces consumers to respond to its message and thereby suffer unavoidable injury that is not balanced by societal benefits, I would support appropriate enforcement action against the advertiser.

Industry-wide restrictions presumably would have to be imposed by trade regulation rule. Under its current appropriation, the Commission has no authority to propose a trade regulation rule with respect to commercial advertising on the ground that it is unfair. The Commission may have the authority under a theory of deception to prohibit a generic variety of advertising such as media ads for wine and beer, but it should do so only if it can establish clearly the need for such a prohibition in light of the nature of the advertising claims and the resulting consumer injury and if it determines that no less restrictive approaches are available that would adequately remedy the problem. Even if it has the requisite authority, however, I believe that the Commission should approach generic advertising bans with great caution. Because of the serious ramifications of such bans and possible constitutional questions, it may be, as a matter of policy, that such bans should be imposed, if at all, only by the Congress.

Question. Do you agree with the FTC staff's proposal to amend or repeal the Trade Regulation Rule on advertised specials?

Answer. At the direction of this Committee, the Federal Trade Commission is reviewing the effectiveness of its rule on availability of advertised specials. The rule generally requires food stores to have advertised products in stock and readily available, unless the stores maintain records to show that the products were ordered in a timely manner and were delivered in sufficient quantities to meet reasonably anticipated demands. The Commission recently published for comment an advance notice of proposed rulemaking to explore the merits of amending or repealing the rule. I understand that the notice has generated a great deal of comment, and I look forward with interest to receiving those comments and the staff's analysis. Depending on the cost data and other information received, the Commission will have a range of options. It can decide not to change the rule, it can amend the rule, for example, to provide exceptions, or it can repeal the rule. In light of the status of the matter, further comment would be premature.

POSTHEARING QUESTIONS OF SENATOR FORD AND THE ANSWERS

Question. Commerce Secretary Baldrige recently recommended that Congress repeal section 7 of the Clayton Act so that corporate mergers can be expedited because of our international trade position. What is your opinion of this proposal?

Answer. One of the important aspects of the Federal Trade Commission's mandate to promote a competitive economy is its responsibility to prevent anticompetitive mergers and acquisitions under section 7 of the Clayton Act. The proposal to repeal section 7 apparently stems from a concern over the ability of American firms to compete worldwide. Under current law, however, both foreign competition and the prospect of efficiencies stemming from a particular acquisition are considered in deciding whether to bring an enforcement action. Therefore, I see no need to repeal section 7. Moreover, the proposal to repeal section 7 leaves untouched the authority to proceed against anticompetitive mergers under section 1 of the Sherman Act or section 5 of the FTC Act.

Senator **KASTEN**. At this time, we will turn to the consideration of the nomination of Carol Dawson to the Consumer Product Safety Commission. If you would come forward.

The committee will come to order.

It is my understanding that our distinguished friend and colleague, Senator Trible, and possibly Senator Warner will be joining us to introduce Carol Dawson, but we are going to proceed and if and when either Paul or John arrive, we will break in on the testimony.

At this time, we will turn to the consideration of the nomination of Carol Dawson to be a Commissioner of the Consumer Product Safety Commission. Ms. Dawson has been nominated by the President to serve the remainder of the term of Sam Zagoria which expires in October of this year. She has been serving as a recess appointee since July of 1984. Prior to the recess appointment, she served as a Deputy Special Assistant to the Secretary of the Department of Energy.

Carol, we welcome you. Your biographical material and the answers you have submitted to the committee's written questions, which were sent to you in advance, will be placed in the record.

[The material referred to follows:]

BIOGRAPHICAL SKETCH OF CAROL G. DAWSON

Residence: 2909 Village Spring Lane, Vienna, Virginia 22180.

Born: September 8, 1937, Indianapolis, Indiana.

Education: Dunbarton College of Holy Cross, (1955–1959) Washington, DC, B.A., 1959. Catholic University of America, Washington, DC, one semester completed toward M.A. in Political Science 1960 (No degree).

Employment record: July, 1984 to Present, recess appointee to the U.S. Consumer Product Safety Commission, Washington, DC; August, 1982–July, 1984, Deputy Special Assistant to the Secretary of Energy, U.S. Department of Energy, Washington, DC; February, 1981–August, 1982, Deputy Press Secretary, U.S. Department of Energy, Washington, DC; November, 1980–February, 1981, Senior Staff Assistant to Dr. Donald J. Devine, Presidential Transition, U.S. Office of Personnel Management, Washington, DC; September, 1959-October, 1959, Executive Assistant to the Director, Americans for Constitutional Action, Washington, DC; June, 1959-September, 1959, Staff Assistant, Senator Kenneth B. Keating, Washington, DC.

QUESTIONS OF THE MAJORITY AND THE ANSWERS

Question. What do you consider to be the mission of the Consumer Product Safety Commission? Please define the relationship between this mission and the role of industry in the area of consumer product safety.

Answer. The mission of the Consumer Product Safety Commission, as defined in section 2 of the Consumer Product Safety Act, has two distinct features. First, the statute instructs the Commission to protect consumers from unreasonable risks of injury and to develop uniform safety standards for consumer products. Second, the agency must assist consumers in evaluating the comparative safety of consumer products and must promote research and investigation into the causes and prevention of product-related deaths, injuries and illness. I believe that these objectives give the Commission a role of providing consumers with a reasonable level of safety, using the least drastic means of governmental intervention. Industry's role in achieving these objectives is to take the initiative in designing and manufacturing products that offer a reasonable level of safety. The degree of Commission intervention may increase where industry is unwilling or unable to act to achieve that level of safety.

Question. What do you believe to be the major accomplishments of the Consumer Product Safety Commission during its existence?

Answer. While there have been successes for specific projects such as elimination of chainsaw kickback and prevention of accidental poisonings by safety cap requirements, one of the major accomplishments of the Commission has been its ability to carry out its mandates by working voluntarily with manufacturers. In virtually every area of activity dealing with substantial product hazards, obtaining corrective actions for violations and, more recently, setting safety standards, the focus of the agency's efforts has been to reach an acceptable degree of safety by working voluntarily with the firms impacted by the agency's actions. This is an efficient, cost-effective approach to safety than benefits the public, industry and the Commission itself.

Question. What do you see as the Commission's most significant shortcomings during its existence? What changes would you favor to overcome these shortcomings?

Answer. The significant shortcomings of the agency have related to procedures within the agency. In my view, the Commission's failure to establish a continuing active program of state and local cooperation was a major shortcoming. However, in fiscal year 1986, at my suggestion, the Commission has committed itself to establishing and maintaining such a program with the staffing and funding necessary to make it work. There has also been a tendency in the past to attempt to take on many projects at a time, in spite of the limited resources of the agency. The Commission has already recognized this and has limited its priorities to five manageable projects for fiscal year 1986. Finally, some projects and activities have been allowed to drag on unnecessarily. For example, it took the Commission more than eight years just to propose a rule requiring safety devices on toy chest lids. I hope to monitor and review significant agency projects closely to assure that they are carried out expeditiously and that they fulfill a legitimate need for the protection of the public.

Question. Do you believe that the Consumer Product Safety Commission should remain an independent regulatory agency or should the agency be incorporated within one of the executive departments?

Answer. The Commission is now accomplishing its mission in a responsible manner while working within the budget and personnel allocations established by Congress. At this time I see no reason to change the system by incorporating the agency into a larger executive department.

Question. Do you believe that the Consumer Product Safety Commission should continue as a five-member Commission? Would you support or oppose the reorganization of the Commission into an agency directed by a single administrator?

Answer. The issue of whether the agency should be headed by a single administrator is really a decision for the Congress. On one hand, having a single administrator would streamline the decision-making process. On the other hand, the current collegial structure allows for a full airing of differing views and philosophies on the complex issues that confront the Commission daily. On balance, at this time, I support continuing the current system.

Question. Do you believe that the Commission's priority setting mechanisms are adequate? If not, what do you believe would be a more effective means for establishing Commission priorities?

Answer. The mechanisms for setting priorities within the agency have improved but need refinement. For fiscal year 1986, the Commission established only five priorities rather than nine as recommended by the staff. Having fewer priorities will allow the Commission to focus on specific product areas while retaining maximum flexibility to carry out other projects to protect the public. I believe that, prior to adoption, each proposed priority must have a definable goal and should be reviewed objectively in terms of cost, need and projected accomplishments, I believe some improvements are needed in this area, and I intend to focus on methods to achieve that goal.

Question. In 1981 the Committee voted to emphasize the use of voluntary standards over the application of mandatory standards. What are your views regarding voluntary and mandatory standards?

Answer. As the question indicates, in 1981, Congress upgraded the role of voluntary standards, in the context of product safety regulation, when it directed the Commission to rely upon a voluntary standard whenever the standard would adequately reduce or eliminate an unreasonable risk of injury and when there would be substantial compliance with the standard. This guideline is completely consistent with my view that the role of the Commission is to provide a reasonable level of safety for the public, using the least drastic means of governmental action. Voluntary standards should be the norm, with the Commission carefully monitoring them to make sure they provide an acceptable level of safety in a timely manner and that there is, in fact, substantial compliance with the requirements. Absent either of these criteria, the Commission would have to use its mandatory regulatory authority.

Question. What is your view of the proper relationship between the Consumer Product Safety Commission and state and local authorities?

Answer. Coordination with state and local authorities is a vital part of the Commission's ability to protect the public. Regulatory decisions impact both of these levels of government, as well as individual consumers. At the same time it is those same state and local governmental units that are often more attuned to consumer complaints, injury data, and industry considerations in their respective areas. During considerations on 1986 priority setting, and subsequently, during 1986 budget deliberations, I proposed establishment of a continuing, active, and fully-funded program of state and local cooperation. This proposal was unanimously adopted by the Commission. The Commission, therefore, will establish this state and local cooperation program for fiscal year 1986. This will implement congressional direction in section 29(a) of the CPSA to establish such a program while enhancing the ability of the Commission to protect the public.

Question. What percentage of the Commission's budget do you believe should be allocated to consumer education rather than standard setting activity?

Answer. The allocation of funds to educational projects depends in large part on the type of hazard the agency perceives. If the hazard is one that can only be addressed by attempting to alter human behavior, an information program may be appropriate. If the problem is one of design, a standard may be necessary. Congress has given the Commission guidance to use the dissemination of safety information with prudence by specifying that the agency undertake no more than three major information programs per year. The Commission should not, however, be obligated to sponsor three each year it the agency determines that a lesser number is adequate.

Question. What types of consumer education programs do you believe are most effective?

Answer. Consumer education programs should be targeted at specific hazards and specific populations. To maximize their effect, they should also focus on emerging hazards of which the public may be unaware or on safety issues that are of current interest. One principle that I believe is very important is that the more concise an information dissemination program is, the greater its effect will be.

Question. What steps will you take to preserve your independence from political and industry pressures? What provisions in the Consumer Product Safety Act do you see as designed to preserve your independence from such pressure?

Answer. I believe it is important for each Commissioner to approach regulatory and enforcement issues with an open mind, avoiding public statements that might prejudge an issue, and avoiding any appearance of conflict. Standards of conduct required by the Ethics in Government Act and Commission procedures that provide for public meetings and the availability of meeting transcripts assure that decisions are made independent of industry or political pressure. In addition, section 4(c) of the Act sets forth prohibtions against a Commissioner's financial or other involvement with manufacturers of consumer products. Therefore, I pledge that my activities and my decisions will be based only upon an independent review of the facts of each issue, and I will strive to meet the ethical standards required of all Presidential appointees.

Question. Do you believe the Consumer Product Safety Commission should have authority over amusement park rides?

Answer. There are a number of factors that Congress would need to consider in weighing the option of reinstating Commission jurisdiction over fixed-site amusement park rides. (Mobile amusement park rides, of course, are still covered by the CPSA.)

First, Congress would need to judge whether the staff and funding resources of this agency would be adequate to monitor effectively the amusement ride industry if the Commission were to receive jurisdiction. In my view, under current funding limitations, it could not.

Second, Congress would need to evaluate the degree to which states and localities have the ability to regulate and enforce in the area of amusement park rides.

Finally, Congress should consider whether providing a mechanism for sharing some measures of federal expertise with states and localities would be adequate to assist those jurisdictions in the event of amusement park ride accidents. Such an option might strengthen states' abilities to respond to their local needs without the necessity forgiving the federal government mandatory remedial powers.

It is ultimately a question for Congress to decide. In my opinion, giving the Commission authority in this area, at this time of limited resources, would not resolve the safety issues related to amusement park rides.

Question. Do the current requirements of section 28 of the Consumer Product Safety Act pose difficulties with respect to the agency's ability to locate qualified individuals to serve on Chronic Hazard Advisory Panels?

Answer. In the recent DEHP CHAP briefing, the staff notified the Commission that the provisions of section 28(b)(1) severely limited the pool of scientists available to participate in a CHAP. This problem arises because the statute expressly excludes from membership scientists who are employed by the U.S. Government, as well as those who receive compensation from or have substantial financial interest in any manufacturer, distributor or retailer of a consumer product. In essence, CHAP membership is limited to State and local employees and academicians who receive no monetary compensation from grants, contracts or consulting arrangements with firms whose activities include the manufacture of consumer products. As a result, many individuals otherwise qualified to serve on a CHAP are barred by statute. I would support legislative changes to alleviate some of the restrictions imposed by section 28(b)(1) as long as: (1) the affiliation of any CHAP member with a government agency or manufacturer, distributor or retailer is clearly identified; (2) membership in the CHAP does not create any real or apparent conflict of interest; and (3) the makeup of any CHAP is not biased in favor of any specific special interest group. I take this position because I feel it is imperative that these panels utilize the finest scientific experience available.

Question. What is your view of the product hazard information disclouse requirement of section 6(b) of the Consumer Product Safety Act?

Answer. Section 6(b) of the CPSA strikes a reasonable balance between the rights of manufacturers to be protected from the public disclosure of potentially harmful, inaccurate or misleading information and the right of consumers to have the widest possible access to information in the government's possession. A year of experience in administering the Commission's rule implementing section 6(b) indicates that the procedures are in fact accomplishing the statutory objectives. However, on the negative side, handling section 6(b) matters is resource intensive and can result in significant delays in dissemination information, especially when the subject matter is complex and involves multiple manufacturers. On the positive side, the 6(b) procedure gives the Commission an important internal quality control check on the accuracy of information. Throughthe confirmation process for consumer complaints, the rule has also dramatically improved the quality and detail contained in consumer complaints on file with the Commission. It has indirectly improved the timely exchange of information with manufacturers, especially in the area of consumer complaints and in-depth investigation reports, thus enabling them to make timely assessments of potential hazards, and when appropriate, to take corrective action.

QUESTIONS OF THE MINORITY AND THE ANSWERS

Question. Please list all votes on public matters you have cast since your recess appointment, the outcome of the vote, and your reasons for the vote.[1]

Question. Did you support the Chairman when he appealed OMB's original budget for the CPSC for fiscal year 1986? Do you believe the current budget request is sufficient to carry out the agency's mandate?

Answer. I supported the Chairman when he appealed OMB's draft budget for CPSC for fiscal year 1986. As background, in August, 1984, the staff originally recommended that the Commission seek a budget of $37,500,000 and 595 full-time equivalent positions. After careful analysis of the proposed allocation of time and funding to hazard projects, I concluded that a budget of approximately $37,000,000 would permit the agency to function effectively without an increase in its personnel ceiling. At the same time, I supported initiation of a comprehensive management review in fiscal year 1985 to identify areas of administrative cost savings so that future cuts, if necessary, need not come from hazard programs in fiscal year 1986. In October 1984, after voting against a final motion to increase the budget, in the interest of unanimity, I supported the Commission's decision to send a revised budget to OMB as approved by the majority.

Subsequently, OMB returned a budget mark of $25,000,000 and 450 full-time positions. Mindful of the need for austerity, the Commission again reviewed the agency's budget to determine where savings could be accomplished. The result was a figure of $33,700,000 and 568 full-time positions. Most of those savings resulted from reductions in administrative costs rather than in hazard programs. The 568-position figure represents the on-board strength of the agency as of December 1984, alleviating the necessity for a reduction in force. Based on the information presented by the staff, these levels should permit the agency to function effectively.

Question. Would you support or oppose further staffing cuts at the CPSC?

Answer. I do not support further staffing cuts in the agency at this time. The fiscal year 1986 budget provides for a ceiling of 568 full-time equivalent positions, a figure that reflects the onboard strength of the Commission as of December 1984.

Question. In your opinion, are state and local programs funded at an adequate level in the fiscal year 1986 budget?

Answer. Yes, fiscal year 1986 funding for state and local programs is adequate. Cooperation with state and local organizations is an essential element in protecting the public against unreasonable risks of injury. State and local personnel are often in a better position than CPSC to identify, assess and respond to hazards associated with consumer products. Similarly, the Commission's prior experience indicates that funds invested in state and local programs have the potential to yield widespread return.

For fiscal year 1986, the Commission established an ongoing program of federal, state and local cooperation in the area of product safety to be fully funded on a yearly basis. The Commission has allocated $250,000 to this program—a dramatic increase over the zero-level funding for fiscal year 1984. This will enable regional offices to reestablish networks and sources of information within their geographic areas in an orderly manner. Furthermore, the $250,000 level represents a realistic amount in terms of planning, managing, and evaluating a revitalized program of grants.

Question. What is your opinion of the policy prohibiting export of noncomplying products?

Answer. I do not believe that the issue of prohibiting export of noncomplying products is a "policy" matter that the Commission, as an administrative agency, has been delegated the discretion to decide. Rather, it is an issue of statutory construction and legislative intent. While the statutory provisions of the CPSA, FHSA, and FFA regarding export are not entirely clear, one reading of those provisions leads to the conclusion that Congress intended to permit export of noncomplying goods, a conclusion at odds with the policy adopted by the Commission prior to my involvement with the issue. I am, therefore, left with the impression that further clarification by Congress may be necessary to ensure that the Commission is fully complying with the direction of the Congress in this area.

I would note that consumers in countries of destination are still protected by the provisions of the statutes that establish a procedure for notifying the recipient country of the nature of the hazard associated with the product to be exported, quantity of the product, date of shipment, and port of entry. The recipient country is, therefore, in a position to determine whether to permit entry.

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[1] The complete voting list is in the Committee files.

Question. Do you believe the Consumer Product Safety Commission should have authority over amusement park rides?

Answer. There are a number of factors that Congress would need to consider in weighing the option of reinstating Commission jurisdiction over fixed-site amusement park rides. (Mobile amusement park rides, of course, are still covered by the CPSA.)

First, Congress would need to judge whether the staff and funding resources of this agency would be adequate to monitor effectively the amusement ride industry if the Commission were to receive jurisdiction. In my view, under current funding limitations, it could not.

Second, Congress should consider whether providing a mechanism for sharing some measure of Federal expertise with States and localities would be adequate to assist those jurisdictions in the event of amusement park ride accidents. Such an option might strengthen States' abilities to respond to their local needs without the necessity for giving the Federal Government mandatory remedial powers.

It is ultimately a question for Congress to decide. In my opinion, giving the Commission authority in this area, at this time of limited resources, would not resolve the safety issues related to amusement park rides.

Question. Was there an increase in section 15 reporting by industry in the last six months of 1984?

Answer. Yes, during the last six months of 1984 section 15(b) reports increased twofold compared with the same time period in 1983. In par, this may be the result of the Commission's priority project in 1984 to educate manufacturers about the requirements of section 15 reporting and the agency's 1984 Statement of Enforcement Policy outlining in detail the types of injury and defect information that should be reported. At present, however, the Commission cannot determine whether the current number of reports received is representative of the number that should be received. It is a matter of concern that the most serious hazards are often not reported and only surface as the result of staff investigation. If the rate of reporting substantial product hazard defect information were inadequate, the Commission's enforcement activities might well set an example for other firms, encouraging them to comply with the law.

Question. Has the Commission taken action on your proposal for an import surveillance program?

Answer. An import surveillance program is scheduled to begin in fiscal year 1986 as an activity under the state and local cooperation program. Where possible, the Commission hopes to be able to show state and local officials how to perform port of entry surveillance of selected products, such as toys and flammable fabrics, in order to identify violative products before they enter domestic commerce. During the latter part of fiscal year 1985 and the first quarter of fiscal year 1986, it is my understanding that the regional offices will attempt to identify states and localities that have the requisite expertise and are willing to engage in such activity on behalf of the Commission. Liaison with the Customs Service will also be necessary to establish the necessary lines of communication and coordination between Customs officials, Commission staff, and state and local officials.

Question. In your opinion, should the CPSC endorse or publicly acknowledge voluntary standards?

Answer. I heartily support the concept of the Commission staff working with those who develop voluntary standards and cooperating with industry in order to promote voluntary rather than mandatory standards. However, I am uncertain that Congress intended that the Commission endorse or recognize voluntary standards, given the fact that the statute is silent in this regard. Moreover, from a public standpoint, the issue of public endorsement or acknowledgement is complex, with many troubling implications, including the possibility that formal Commission endorsement could have serious anticompetitive effects and the possibility that the public could be misled as to the relative safety of those products not covered by endorsed standards. As a result of these concerns, which I feel outweigh the potential benefits, I have voted against having the Commission endorse specific voluntary standards. I do recognize, however, that Congress has given the Commission authority in section 9 of the CPSA to defer to voluntary standards, and I support using this authority where appropriate.

Question. What is your opinion of the CPSC's injury-data collection?

Answer. The injury-data collection done by the Commission is essential to the mission of CPSC. Without such material the Commission would not be able to divise appropriate solutions to consumer safety problems. The National Electronic Injury Surveillance System (NEISS), already in place, performs a vital role in gathering such data, and it should be improved where possible to put into perspective the degree to which a given product's use has a causal relationship to a given injury. In addition, I support a search for additional sources of injury data, such as through greater cooperation with state and local governments. The fiscal year 1986 budget for the Commission contains funds that will, in part, be devoted to such increased cooperation, and I support that allocation.

Question. In an October 17, 1984 speech to the Portable Power Equipment Manufacturers, you stated:

"Perhaps the most important improvement in output of regulatory agencies is simply to break down the adversarial relationship that has, until recently, prevailed between regulators and industry."

Could you explain this statement?

Answer. The statement was in the context of the Commission's work on the problem of chainsaw kickback. The Commission began the process of addressing the situation by initiating a proceeding to develop a mandatory standard for chainsaws. Those who dealt with the issue at that time tell me that the objective and expectations of the various groups participating in the mandatory standard process varied considerably. As a result, a great deal of acrimony developed among the Commission, chainsaw manufacturers, and consumer groups. Subsequently, the Commission adopted an approach stressing voluntary cooperation to identify the parameters of the kickback problem, develop the machinery and methodology to measure kickback, and establish remedial measures to reduce the problem. As a result of these efforts, the industry pioneered the technology that largely solved the kickback tendency of chainsaws. Although I was not a member of the Commission for most of the time the chainsaw issue was under review, I was impressed with the effectiveness with which all sides worked to resolve such a complex problem. That is what I was addressing in my remarks: breaking down barriers that traditionally have inhibited government and industry cooperation often speeds the process by which we can reduce the risk of injuries to consumers. Such cooperation is to be encouraged, and I welcome it.

Question. Should a recall be employed if most or all firms in an industry have sold a product which contains a common defect?

Answer. The recall of products is the most drastic step that the Commission can take to deal with substantial product hazards and one that should be taken only where public health and safety require a remedy of that magnitude. The answer to such a hypothetical question would thus depend on the circumstances involved, such as the severity of the defect, the immediacy of the danger it presents to the public, and the extent of the product's distribution. The number of firms affected and the economic impact of a recall are also factors to be considered in taking such a step, although not the controlling factors. Of course, if a recall is necessary, it should be implemented without delay. Almost all recalls of consumer products have been carried out voluntarily by manufacturers in cooperation with the Commission—an arrangement that I favor. Should a voluntary recall be ineffective in removing a dangerous product from the marketplace or should a firm refuse to recall a product that should be removed from the hands of consumers, I would then support using the mandatory powers of the Consumer Product Safety Act to product consumers from unacceptable risks.

Question. Do you agree with a recent Heritage Foundation report which found that product liability lawsuits make the CPCS redundant?

Answer. When the article appeared in the Heritage Foundation's Mandate for Leadership II, I met with the author to discuss her views. She assured me, as I think one can see by reading the piece in its entirely, that there was no suggestion that the Consumer Product Safety Commission should be abolished. Rather, the article suggested that since product liability suits may play a role in discouraging the production of unsafe products, the CPSC may sometimes spend its resources to do what the court system accomplishes anyway. I believe that the author's comment was meant solely to stimulate discussion of the most effective use of CPCS resources. After all, the product liability system is designed to compensate individual victims after they are injured, and its deterrent value is an added benefit to society. The CPSA seeks to prevent injuries to broad segments of the public before they happen, and I thus see the two systems as complementing each other. For example, product liability often addresses isolated injuries that would not be appropriately remedied by action at the federal level; it is not specifically designed to remove dangerous products from the marketplace in a timely manner. The Commission, on the other hand, often deals with risks of injury that cut across or involve whole product lines. Such widespread risks may require action on a national scale to protect the public. There is no denying the fact that the CPSC has a broad mandate and limited resources, and I certainly welcome constructive debate and suggestions on ways to maximize those resources to ensure safety for consumers.

Senator **Kasten**. Senator Ford, do you have an opening statement at this point, otherwise we will proceed.

Senator **Ford**. I have no opening statement, but Senator Hollings ask me to submit this for the record. I am just happy to be here and able to spend a few moments with you.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

Mr. Chairman, this afternoon we consider the nomination of Carol Dawson to the Consumer Product Safety Commission [CPSC]. The CPSC now has two Commissioners who have been confirmed by the Senate, one unfilled seat, and a Commissioner who is serving as Chairman due to a recess appointment. Clearly, Ms. Dawson's hearing today is an important one. The Committee is interested in her views on the mission of the agency and on the budget for the agency.

I believe in an independent and healthy Consumer Product Safety Commission and have opposed effort by the administration and others to abolish the agency. I have supported a healthy budget for the Commission and have opposed efforts to weaken the agency by reducing its level of funding below that needed to enforce its statutes.

Unfortunately, in the 98th Congress, an authorization bill for the CPSC was not enacted into law. This agency has not functioned under regulation authorization legislation since 1978. It is important that Congress enact an authorization bill this year.

I will work with the Chairman and with Senators Kasten and Ford to enact an authorization bill for the CPSC this year.

Senator **Kasten**. We are happy that you are here.

We will go forward immediately then to Ms. Dawson's statement. We are pleased to have you with us today.

STATEMENT OF CAROL G. DAWSON

Ms. **Dawson**. Thank you, Mr. Chairman, and Senator Ford.

It is a very great honor for me to be here before you today as the President's nominee to the U.S. Consumer Product Safety Commission.

I bring to this assignment a deep concern for the health and safety for all Americans, especially for infants and young children who are unaware of the possible hazards that are associated with the products they use. I also bring to the Commission a broad range of professional and personal experience.

Since July of 1984, I have had the honor of serving as a Consumer Product Safety Commissioner. Before that, I was a staff person at the U.S. Department of Energy. That experience, coupled with my involvement with public issues, my work in Congress as a legislative assistant, and my experience at the White House, provided excellent training for my work as a member of an independent regulatory agency. My involvement in public information activities and my background as a newspaper reporter in a small community have also helped make me sensitive to the effects of Government policies on private individuals.

As a mother of four children, health and safety issues have always been of great interest to me. At a time in American history when industry has been able to provide our citizens with some of the most sophisticated and beneficial new products ever created, our society is also presented with an important challenge: how best to assure the public that products in which they put their trust are safe from unreasonable risk.

It is obviously impossible to eliminate all risks, whether they be from illness, accidents or natural disaster. But Government has a responsibility to work cooperatively with industry and consumers to assure that, to the greatest degree possible, the public can purchase products that meet a reasonable standard of safety. At the same time, the Commission should strive to use the least drastic means of intervention available to achieve that standard.

I recognize the enormous responsibility that membership on the Consumer Product Safety Commission imposes, and my 8 months of service on the Commission have given me some insights as to what challenges the Commission faces and what my role at that agency should be.

First, the Commission has an overwhelming mandate simply in terms of the number of products over which it has jurisdiction. The ability to monitor such a wide range of products requires that the professional staff be of the highest quality and that the individual Commissioners have a real dedication to pursue the mission of the agency. I am impressed with the high quality of the staff. I also feel I possess the requisite dedication.

Second, because the comprehensive regulatory authority granted by Congress carries with it the potential of widespread impact on the marketplace, I believe it important that the Commission exercise its regulatory authority judiciously, with full regard for due process. Whenever the Commission exercises its power to regulate or enforce the laws, the economic impact of any such activity must be weighed against the benefits to the consumer. While it is important that the Commission weigh this factor in order to fulfill its mandate, it cannot lose sight of the fact that its mission is to protect consumers against unreasonable risks of injury.

Third, at a time when serious problems of Federal deficits plague executive and congressional decisions about funding, I believe that it is now more important than ever for the Commission to carry out its mission at the least possible cost to taxpayers. In spite of budget cutbacks in the last 3 years, the agency has shown a genuine dedication to streamlining its procedures and making the most of its limited resources. I plan to continue this commitment to cost-effective Government.

As an example of the kind of cost-effectiveness I seek, let me point to the Commission's program of cooperation with state and local governments on consumer issues. As you know, Mr. Chairman, section 29(a) of the Consumer Product Safety Act embodies Congress' desire to see such cooperation take place, and I strongly endorse it. As I said in my reply to written questions, the Commission can make its limited resources go much further by having State and local agencies assist us in educating the public and responding to consumer product hazards.

An illustration of the value of the Commission's program in this area, Mr. Chairman, is your own home State of Wisconsin. There, the Commission has designated the Wisconsin Department of Agriculture as its contact for product safety activities and has given the department a contract to investigate cases of product-related injuries. Not long ago, the Commission received a letter from the Trade and Consumer Protection Division of that department saying that, thanks to CPSC's assistance, the agency was able to increase its investigations of consumer injury cases by 250 percent. I would like to submit that letter for the record as an illustration of the value of the Commission's program of cooperation with State and local agencies.

Senator **KASTEN**. Without objection, the letter will be made part of the record.

Ms. **DAWSON**. Such contracts also enable the Commission to receive more accurate data on product-related injury at a lower cost than otherwise possible. The Wisconsin program enables the CPSC to collect injury data at less than half the cost of having to gather that information ourselves.

This kind of cooperation is not limited to injury investigations, however. In Kentucky, for instance, the CPSC has assisted in poison prevention programs. In Missouri, the agency has contracted for educational seminars for the elderly and clinics on toys and nursery equipment. We have funded public information projects in South Carolina and Virginia dealing with space heater safety and smoke detector use. Time and again, the Commission has seen the value of joining forces with State and local agencies to stretch the Commission resources, and I strongly support that effort.

Finally, I also plan to focus on issues related to the safety of infants and young children. These efforts would include concentration on toys, infants' furniture, and enforcement of the Poison Prevention Packaging Act.

In exercising my duties as a Commissioner, I will examine each issue in an objective manner, keeping in mind the benefits to consumers and the burdens on industry. I support continued efforts by the Commissiom to work with industry to develop effective voluntary standards, which in my view are preferable to the time-consuming and expensive procedures for mandatory standards. Where mandatory standards exist, I would insist on their conscientious enforcement; and where voluntary standards prove ineffective, I would support the development of mandatory standards.

I look forward to this challenge with great enthusiasm. I am anxious to serve my country in this most important role, and I would be happy to answer your questions at this point.

[The letter referred to follows:]

STATE OF WISCONSIN,
DEPARTMENT OF AGRICULTURE,
TRADE & CONSUMER PROTECTION,
November 19, 1984.

Mr. VICTOR P. PETRALIA,
Director, Consumer Product Safety Commission,
Midwestern Regional Office, Chicago, IL.

DEAR MR. PETRALIA: We are in the process of finalizaing our 1984 contract with the Consumer Product Safety Commission. With discussions continuing as to the relative worth of funding such projects, it seems only right to review what this small contract has done for product safety enforcement in the State of Wisconsin.

Our Department is charged with product safety and hazardous substance enforcement for the State of Wisconsin. For quite some time we have been the state designee for CPSC.

Because of these responsibilities, we take the subject very seriously even though it represents only a fraction of the state statutes and administrative rules we are charged with enforcing.

In the past year, due to our Substantial Hazards Program contract, our agency has grown in the investigation of product safety cases. Our investigators have learned to monitor the area where they are based for potential product safety problems. Four investigators have had the opportunity to develop product safety cases when only one previously had extensive experience.

Our usual method of approaching product safety cases is to respond to complaints registered by consumers. In this past year, under our contract with CPSC, we investigated roughly seventy instances where a consumer product was the possible cause of an incident. Only twenty of those cases were received through the normal channels of consumer complaints. The remaining fifty were achieved directly as a result of our contract. In other words, our contract increased productivity by two hundred and fifty percent.

Beyond the mere numbers, we handled investigations of a more complex nature, learning as we investigated. The final evaluation of the worth of our work will have to come from your office but we are aware of one case which is still being considered as the basis for a product recall and two investigations involving deaths are just now being completed.

Some of this work will be continued even without a new contract. But realistically, the numbers will start to go downhill without the incentive of a contractual relationship. The funds received by contract did not cover the costs of the investigations, only defrayed them. Other casework will push product safety to one side at least in the sense of searching out potentially dangerous products.

A recent disappointment has been the cut in funds available for a contract to survey compliance with the new voluntary standard on wood stoves. We will not be doing this survey work without CPSC support although we realize how important this information is to the success of CPSC enforcement efforts.

Our offices have always maintained an excellent working relationship. This will undoubtedly continue with or without future contract work. However, the level of effectiveness CPSC can expect to achieve through our state's enforcement program has certainly been illustrated by our contractual relationship of the past year. We have been pleased with the results and hope we can see the continuation of such supportive programs in the future.

Sincerely,

DONALD J. SOBERG,
Administrator, Trade and Consumer Protection Division.

Senator **KASTEN**. We thank you for your testimony.

As you know, the Consumer Product Safety Commission recently has undertaken a consumer safety education program aimed specifically at the needs of the elderly. You and I were part of an announcement of that program going national. We were able to have pilot projects, one in Philadelphia and the other in Green Bay, WI, as you are aware.

What is your view of this program and the efforts by the agency to address the special needs of this particular group of consumers, the elderly?

Ms. **DAWSON**. In the Consumer Product Safety Act, Congress at least in one place in the statute, directed the Commission to give special consideration to the needs of the elderly, the handicapped and infirm. I think we are fulfilling the agency's mandate through this program. The population at risk is at this point some 28 million Americans, and our Information and Education Program is certainly well within the intent of Congress.

As you know, since you attended the opening press conference my colleague Commissioner Saundra Armstrong is taking the lead on this project and doing a very good job. You might not also know that we, as a Commission, are planning to hold a National Conference on Safety for Older Consumers in September of this year, and it will be in Philadelphia.

At that time many of the issues we have raised in the Commission's checklist on hazards in the home, the environment, where elderly people are most often injured, will be addressed.

I am particularly interested in one of the Philadelphia workshops. It will deal with the continuing problem of ingestions of prescription drugs by young children. One of the studies at our Commission has shown us that in some cases children are ingesting prescription drugs when visiting grandparents or other elderly relatives. We want to address that problem specifically so that older Americans can also be involved in our continuing effort to protect young children.

Senator **Kasten**. We have been joined by my friend and colleague, the senior Senator from Virginia. I would like to ask if Senator Warner has a statement he would like to make at this time.

STATEMENT OF HON. JOHN WARNER, U.S. SENATOR FROM VIRGINIA

Senator **Warner**. Thank you, Mr. Chairman. I know the nominee quite well and I am delighted to introduce her. I will put my statement in the record. I apologize for being 3 minutes late, but I am chairing a hearing on the B-1 bomber, Senator Ford's favorite program.

It is my great pleasure this afternoon to introduce Carol G. Dawson to the committee.

Ms. Dawson has been appointed by President Reagan to serve as a Commissioner of the U.S. Consumer Product Safety Commission.

Ms. Dawson earned a bachelor of arts degree from Dunbarton College of Holy Cross in Washington, DC, and did graduate work in political science at Catholic University.

She was a founding member of Young Americans for Freedom and her biography appears in Outstanding Young Women of America and in the 1980 edition of Who's Who is the East.

In 1975, she was listed in Who's Who of American Women. Her very successful professional career includes contributions to various news periodicals as well as a position at the White House as a news analyst in 1969.

She was a member of the Presidential transition team at the U.S. Office of Personnel Management and later served as Deputy Press Secretary at the Department of Energy.

She was then appointed Deputy Special Assistant to Secretary of Energy Donald Hodel.

Ms. Dawson was sworn in as a Commissioner at Consumer Product Safety Commission on July 6, 1984.

I urge the committee to swiftly report her confirmation so that the full Senate can move quickly to confirm her appointment.

Ms. **Dawson**. Thank you very much, Senator Warner.

Senator **Warner**. You are in very good hands.

Senator **Kasten**. Senator, we thank you for your support of the nominee, and we thank you for joining our committee hearing.

During the last Congress, Carol, the Consumer Product Safety authorization bill was held up basically because of controversy over the legislative veto. There are two kinds of general approaches that have been taken on the legislative veto. One requires the Congress to affirmatively approve each agency rule, or at least each major agency rule, and the other permits Congress to selectively disapprove or veto agency rules.

Do you think that the agency's rulemaking should be subject to such a systematic congressional review or congressional veto and, if so, what form should that review or veto, in your opinion, take?

Ms. DAWSON. It is certainly the right of Congress to oversee the actions of the agencies that it has established with the decision on the best oversight procedure certainly best left to Congress itself.

If Congress were to decide to take the legislative veto approach, where the choice is between an approval mechanism and a disapproval mechanism, I think that in the interest of orderly procedure and the avoidance of delays in good regulatory actions, I would favor the disapproval approach.

Senator KASTEN. Senator Ford.

Senator FORD. Does that get to the constitutional question as it relates to legislative veto whether it is approval or disapproval?

Ms. DAWSON. It is my understanding, Senator Ford, that as long as a veto is passed by both Houses and signed by the President, it would meet the constitutional test.

Senator FORD. That is a resolution, it is a form of legislation. It is not even one House or two Houses vetoing. I have always been against the legislative veto on the fact that it was unconstitutional, and now after 10 years they found out that I was right. It is typical up here, it takes that long to get anything done.

Let me ask you a couple of other questions. For fiscal year 1986, the administration has requested $33.7 million for the Consumer Product Safety Commission. Do you think the agency's budget should be cut from the fiscal year 1985 level of $36 million?

Ms. DAWSON. I participated in the deliberations on the budget and it was a difficult task. Since we have been able to cut administrative costs and we have been able to focus on those hazard programs that are really dealing with the most severe hazards, I believe the agency can effectively operate under the administration's proposed budget.

Senator FORD. How many personnel will you reduce in the agency as a result of an approximately $3 million reduction in the budget?

Ms. DAWSON. By our own staff's calculations, it will be less than seven full-time employees that would be affected.

Senator FORD. In the total agency, only seven employees?

Ms. DAWSON. We have only 568 employees at this point.

Senator FORD. You have only 568.

Ms. DAWSON. Yes.

Senator FORD. That is almost as good as FTC, they have 900 lawyers.

Seven employees and a $3 million cut.

Ms. DAWSON. Reductions will mainly come from the administrative end of our operations.

Senator FORD. Let me ask you this, then. Would you support a restructure of the agency, placing it within an existing executive department headed by a single administrator?

Ms. DAWSON. I think that is a valid question for Congress to debate. My impression since serving on the Commission is that the collegial nature of the body has been effective in bringing together people from various philosophies and allowing a more complete airing of issues.

Obviously, with a single administrator, some decisions could be reached more quickly. At this point in time, on balance, I would support the continuation of the five-member Commission system.

Senator FORD. You would support that?

Ms. DAWSON. At this point, yes.

Senator FORD. How long would it take you to get off that point?

Ms. DAWSON. I think that that is a question for Congress to decide.

Senator FORD. I understand that. You can say that Congress is supposed to decide all of these things, but somehow the Commissions have to come up here and recommend things to us to approve or disapprove. We also have to oversight your Commission to see if we think you are doing the proper thing.

How do you feel about it, you are individual, you are down there representing us, and we are going to give you the approval or disapproval. I suspect that it will be overwhelmingly approved. But still you have to tell us what you think.

Ms. DAWSON. At this point, I would favor continuing the Commission system.

Senator FORD. You would even use your influence as far as possible for it to continue as an agency rather than to be given to a single administrator?

Ms. DAWSON. I am not sure that it would be appropriate for me to get that closely involved with something like that, but, yes, if I were asked my opinion, I would have to support the system as we have it now.

Senator FORD. If it became a single administrator, would you want the job?

Ms. DAWSON. I would have to think about that, Senator.

Senator FORD. Let me ask you another question. Have you support projects or programs in the States that are not represented on this committee?

Ms. DAWSON. Certainly.

Senator FORD. You didn't mention them, and I just wondered if there were others. You mentioned Kentucky, Wisconsin, Virginia, all those good States, and I was just wondering if you were in all 50 States rather than the few that were mentioned.

Ms. DAWSON. I am not sure that we have on-going contracts in all 50 States but we certainly have a presence and a network of contracts with the State organizations that do get involved in product safety issues.

Senator FORD. How do you feel about the extinguishable cigarette?

Ms. DAWSON. That is, of course, a project that Congress has required, and our agency is the lead agency as you know. I am comfortable with the fact the project is proceeding on schedule. The technical advisory group has met. Developed a document determining what resources and tasks will be required to implement this activity. As a matter of fact, I believe the group met yesterday and is meeting again today. At this point there are no appropriations to fund a program, and I would assume that new appropriations would be necessary to permit the program to go further.

That is about as much as I know about the status of it. I understand that we will be informing Congress at various times during the year as to the progress that is being made.

Senator **Ford**. As I understand it, the group said that it would take $2.7 million to carry out the program as they recommend it. Is that true?

Ms. **Dawson**. That is what I understand the interagency task group has found.

Senator **Ford**. Would the funds come from your budgetary allotment, or would that have to be additional funding?

Ms. **Dawson**. It is my understanding that we would probably need a supplementary appropriation for that, Senator.

Senator **Ford**. That is one I will fight because I am very much opposed to high tar and nicotine in cigarettes, and if you get an extinguishable cigarette that is exactly what you do. An extinguishable cigarette increases the tar and nicotine in cigarettes, therefore, I would like to hold down tar and nicotine in cigarettes, and get an opportunity to smoke lights.

That is all I have, Mr. Chairman.

Senator. **Kasten**. We have been joined by my friend and colleague, Senator Trible, the junior Senator from Virginia. Senator Trible is also a member of this committee, and he would like at this point to make an introduction of our nominee.

Senator **Trible**. Thank you, Mr. Chairman.

It was my hope to be here at the outset, and it is now my pleasure to welcome Carol Dawson, a Virginian and a friend of long standing. I have known and worked with this good lady for almost a decade. She is an extraordinarily well qualified choice for the Consumer Product Safety Commission where she has served as a recess appointee since July 1984.

Her list of accomplishments is remarkable. She is a prolific writer. She served this administration at the Commission, the Department of Energy, the Office of Personnel Management. She has also worked on Capitol Hill and the White House. In addition to all that, she found time in her busy life to raise four fine children. Clearly her breadth of experience will serve her well in this position and, for that matter, any other that she takes on.

In summary, Mr. Chairman, let me say that Carol Dawson is an intelligent and open-minded professional, and it is a pleasure to recommend her prompt approval as a Commissioner.

Senator **Kasten**. Thank you very much for that strong statement in support of Carol Dawson. Do you have any questions that you would like to ask the nominee?

Senator **Trible**. I do not, but I am pleased to see her here today.

Senator **Kasten**. We thank you very much for your testimony today, and your answers to our questions. We look forward to working with you.

The committee stands in recess.

[Whereupon, at 2:33 p.m., the committee recessed.]

[The following information was subsequently received for the record:]

Posthearing Questions of the Minority and the Answers

Question. In a letter to Senator Kasten, Chairman of the Senate Commerce Committee's Consumer subcommittee in May of 1981, OMB Director Stockman said the administration favored removing the CPSC's authority to regulate chronic hazards. Do you agree?

Answer. I have not seen Director Stockman's letter of 1981, so I cannot speak to his statement except in the context in which you offer it. If a consumer product presents an unreasonable risk of injury in the nature of a chronic hazard, it seems clear to me that the agency must have a role in this area. Because it is so difficult to quantify both the problem and the possible remedies for products that present chronic hazards, this area often requires the expenditure of a great deal of resources. I would like to see more cooperation with other federal agencies in this area so as to promote consumer protection in the most cost-effective manner, while avoiding wasteful duplication of effort among agencies.

Question. In March of 19821, David Stockman, Director of OMB testified concerning the administration's proposed budget cuts for the CPSC. In his testimony, Mr. Stockman emphasized that the cuts were not designed solely to reduce the size of the Federal budget deficit but were an integral part of the administraton's efforts to redirect regulatory policy. Do you share Mr. Stockman's views on this two-pronged approach to cutting the CPSC's budget?

Answer. I believe Mr. Stockman's comments were offered in support of the OMB budget recommendations for Congress to consider. My understanding of the budget cuts made in 1981 is that Congress chose to achieve reductions in Federal spending in a number of areas and that the CPSC was one agency that Congress determined could sustain reductions without compromising consumer safety. Moreover, I believe the substantive amendments enacted by Congress in 1981 required the Commission to redirect its regulatory policies as much as, if not more than, budget reductions. To some extent, the agency has been required to redirect its regulatory policy as a result of the budget decrease and legislative changes. However, I do not believe that the measures have caused less protection for the consumer but, rather, have resulted in a reasonable level of protection at less expense to the taxpayers.

Question. You have said you don't support a restructuring of the agency at this time. Are there any circumstances that you foresee that could change your position?

Answer. As I stated in answers to previous questions and in testimony before the Committee, I strongly favor the present system of a five-member Commission. It has distinct advantages over a single-administrator agency in that it allows for the airing of a variety of views and results in decisions which constitute a consensus of those views. I cannot foresee specific circumstances where my position could change substantially.

Question. One CPSC Commissioner has charged that in the case of accordion-style baby gates the CPSC, which had been aware of deaths and injuries caused by the gates since 1981, waited until January of 1985 to halt new production of the gates. The industry has been working on a voluntary standard since 1982, but the standard is still not complete. How much time should the CPSC allow industry to adopt a voluntary standard?

Answer. It is difficult to say the appropriate amount of time that should be allocated for the industry to develop a voluntary standard. It would depend on the factual circumstances in each case, such as the nature and severity of the hazard, the nature of the industry, the complexity of the product, and the degree of cooperation on the part of industry in addressing the problem. In the future, we should concentrate our efforts in those product areas that truly present unreasonable risks of injuries in order to assure that needed voluntary standards are adopted more quickly. To address this goal, new mechanisms are already in place. They include the request to the staff that Commissioners have regular reports on the status of voluntary standards activities and the establishment of the new position of voluntary standards coordinator.

Question. Would you agree with a statement made in the CPSC's 10th anniversary report that applying Section 15 against an entire industry "provides an efficient and flexible mechanism to protect the American public?

Answer. As I have already stated in my answer to Question 12 of the previous minority questions, the use of Section 15 depends on the circumstances involved, such as the degree of hazard to the public, the nature and severity of injuries involved, the population at risk, the number of products in distribution, and the availability and appropriateness of other remedial measures. As I mentioned before, reasonable levels of consumer protection should be accomplished using the least drastic means of federal intervention. In the vast majority of potential Section 15 cases, voluntary agreements are worked out between the Commission's compliance staff and the manufacturers without having to resort to the route of administrative complaints.

Regarding the use of Section 15 industry-wide, if there were reasonable cause to believe that a substantial product hazard existed in a product manufactured by a number of firms, I would be pledged to support the laws as enacted by Congress, and I would not hesitate to use that tool.

Question. Why did you vote against a budget request for $37,500,000 and 595 full-time positions and against a subsequent budget request for $37,350,000?

Answer. As I indicated in my statement accompanying my votes on the budget (which was provided to the Committee), I believed that a budget figure of $36,950,000 and a full-time equivalent level of 587 "represents a realistic assessment of the staff and contract dollars needed to maintain an effective program of product safety at a reasonable cost to the taxpayer." Accordingly, I voted against the higher figures when they were offered.

Question. Do you support the new section 15 guidelines for firms reporting potential hazards?

Answer. In April, 1984, when the Commission adopted the section 15 policy statement, I was not a sitting member. It is my understanding that the guidelines were issued to give industry guidance on how the Commission has reacted to assessing the need to report different hazard scenarios and various types of information to comply with section 15(b).

Currently, the Commission is providing an opportunity for public comment on the Policy Statement at the request of interested parties. I am, therefore, looking forward to reviewing these comments when the comment period closes in mid-March. Once I have had the full benefit of these comments, I hope to be able to develop a firm position with regard to the guidelines.

Question. In your opinion, will the Commission be able to absorb another 6 to 7 percent cut in fiscal 1987?

Answer. The Commission has already taken substantial budget cuts. As to additional cuts in fiscal year 1987, we do not know at this time what potential hazards might emerge, how severe they might be, and what budgetary resources might be required to address them. Without such information, it is difficult to guess what CPSC's budget should be two fiscal years from now. Should more cuts be implemented, however, I would attempt to look for savings through greater efficiencies rather than through reductions in hazard programs.

Question. Can you outline what action the Commission is taking concerning the 104 deaths that have been associated with "all-terrain vehicles"?

Answer. The Commission has moved earnestly to evaluate the possible hazards associated with ATV's. The Commission has been briefed twice on the subject of ATV's, once by the industry and once by the staff. By March 20, the staff has been directed to recommend to the Commission the allocations of time and resources needed on a short-term basis to address this issue as quickly as possible during this fiscal year. The Commissioners have expressed the desire to obtain a solid, in-depth analysis of the hazard. It would be my hope that once a complete evaluation of all relevant factors is done, the Commission will move forward expeditiously with appropriate remedial action.

Question. Aside from being a user of consumer products, what qualifications do you have in the product safety area?

Answer. I have a strong communications background, and since one of the most important functions of the CPSC is to communicate with the public and educate them about potential hazards, I feel my skills help the agency in its mission. In addition, I have spent years not only using consumer products but supervising their use by four active and intelligent children., That is why I am concerned about safety for young consumers, having seen firsthand the dangers they face and the need to supply products that do not present hazards for innocent users. The Commission, a collegial body, should have a variety of viewpoints in order to develop the most effective policies to protect consumers from unreasonable hazards. I have seen product safety problems throughout my life, but from perspectives that differ from those of the other Commissioners. They, in turn, have experiences that differ from my own, thus giving the Commission a well-rounded character. The Commission mirrors in a small but significant way the diversity of consumers, and consumer interests, in our society. The fact that one Commissioner is a former policewoman, and another is a long-time government attorney, and yet another comes from a background as a civil servant, is helpful to the task facing the agency.

Question. In prehearing questions submitted to you, you indicated that one of your priorities will be children's products. Do you support informative age labeling for toys?

Answer. As more consumers become aware of the reasons behind the age labeling of toys, I do feel that voluntary informative age labeling in specific instances can be useful. I attended a meeting with the toy industry and CPSC staff last fall at which this subject was covered fully. Currently, the Commission is funding a project to develop guidelines for internal use on what types of age labeling may be appropriate for certain types of toys. Among other factors, these guidelines will be designed to take into account appropriate skill and developmental levels of children and what toys are most likely to appeal to younger children most at risk. Once the development of uniform guidelines is complete, the Commission plans to share that information with manufacturers so they can address the question of informative age labeling as it applies to their own products. I should add that some domestic manufactures already use this type of labeling where it is appropriate. Most of the problems of inadequate or nonexistent labeling occur with imported toys.

Question. What is your opinion of current Commission injury data collection, in particular, the National Electronic Injury Surveillance System [NEISS]?

Answer. As I said in response to question number 10 of the previous minority questions, the NEISS system is only one of the methods that our agency uses to gather injury data. It is not designed to be the sole source of data, but is a useful statistical tool by which we can estimate the number of injuries associated with any given product. A NEISS report, however, does not necessarily tell whether the injury was caused by consumer misuse or even by a product defect. The staff's in-depth investigations [IDI's] and alternative sources of data provide more detailed information on causation and defects. In projecting estimates from NEISS data, it would be desirable to put into perspective the degree to which a product use has a causal relationship to injury. Studies are under way to evaluate the feasibility of incorporating such information into injury estimates.

Beyond that, I have supported efforts to tap resources of state and local agencies as alternate, supplementary sources of injury data. The use of coroner reports, news clips, and consumer complaints through the "hot line" have already proven to be important in the overall picture of data collection.

Question. You note in your statement opposing the fiscal year 1986 budget request of October 16, 1984, that there are "undoubtedly other ways in which the Commission can reduce its operating costs" and that "various recommendations of the Grace Commission have yet to be implemented." One of the major recommendations of the Grace Commission as it relates to the CPSC would be to close the five regional offices. Is this one of the recommendations you are referring to? What recommendations would you like to see implemented at the CPSC?

Answer. The Grace Commission recommended five basic changes in the way the CPSC operates. First, it suggested a reorganization of the "matrix" system of management to cut back on the amount of overlap in the supervision of programs. That suggestion will be addressed in a 1985 management review process that I support. During this review, all aspects of the agency management, including the "matrix" system will be reviewed by a panel looking at additional ways to streamline operations without skimping on hazard programs. Since the budget statement I made last October, I have pushed for this approach as one way to implement the Grace Commission's suggestion for budget savings.

Second, the Grace panel proposed that the high ratio of managers to professional staff be reduced. I support that effort as a way to increase efficiency without sacrificing consumer programs.

Third, the Grace Commission called for CPSC to discontinue use of the Food and Drug Administration's Parklawn computer facility and instead set up its own computer system. The savings identified by the Grace Commission did not take into account the added personnel and other support costs this would entail, and the agency's own study of the matter concluded that the changeover would actually cost more in the long run than it saved.

Fourth, the panel suggested that the agency's Washington, DC and Bethesda offices be combined, and I am a strong supporter of that recommendation. It would not only save in rental and travel costs but would also make CPSC run more efficiently by enabling all levels of the agency to have ready access to one another.

Finally, the Grace Commission suggested that we "explore" the idea of closing the five CPSC regional offices. The Grace panel itself did not come up with anticipated savings from such a move, because it only recommended that the idea be considered. It may well be that the Grace Commission failed to consider the cost-effectiveness of our state and local cooperation efforts, which can only be accomplished through the field offices. While I favor taking a look at any serious recommendation that can produce savings, I am not in favor of closing the regional offices at this time. I feel they provide an indispensable data collection and safety monitoring function for the agency. In addition, they are responsible for conducting virtually all investigations of potential substantial product hazard cases and for developing enforcement cases against individuals who violate the laws administered by the Commission. I would have to be convinced that these functions could be carried out as effectively from one headquarters office before I could consider such a move.

Question. How do you feel about the CPSC Chairman and Commissioners traveling a great deal around the country?

Answer. If visits to regional offices, independent laboratories, or legitimate industry or consumer meetings facilitate the work of the Commission, then such travel can be useful. However, in times of severe budget restrictions, all members of the Commission should use retraint in making official trips. There is a great deal of work for the Commissioners to do in Washington, therefore, I do not plan to take many trips during my tenure. I cannot speak for the other Commissioners, but I feel that Commission funds are better spent on insuring consumer safety and not on extensive travel budgets.

EDWARD J. PHILBIN TO BE COMMISSIONER, FEDERAL MARITIME COMMISSION

WEDNESDAY, MARCH 6, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2:35 p.m., in room SR-253, Russell Senate Office Building, Hon. Theodore F. Stevens presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; David Dye, staff counsel; and John D. Hardy, minority staff counsel.

OPENING STATEMENT BY SENATOR STEVENS

Senator STEVENS. I apologize for the delay. This meeting is to consider the nomination of Edward Philbin to the Federal Maritime Commission.

The FMC administers the shipping statutes which require regulation of the domestic offshore and international waterborne commerce of the United States.

Last year our committee played a major role in developing the first comprehensive revision of the foreign commerce shipping laws in over 50 years, that is, the Shipping Act of 1984. These changes brought about by that legislation lead to a necessary readjustment in the way FMC conducts its business.

Overall, Chairman Green and the Commission have done an admirable job in meeting this mandate, and they are commended for that. But there is much to be done, and a new member of the Commission will be challenged by the tasks that are involved.

I am sure that we speak for members of this committee in saying that the growing health of the U.S. merchant marine is of great vital concern to all of us. We try to follow the work of the Commission as closely as we can, and we have great expectations for the future.

It is in that spirit that we are here to review this nomination. Do you have any comments to make, Senator Inouye?

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. Thank you, Mr. Chairman.

I wish to join you in welcoming Mr. Edward Philbin. Mr. Philbin has been serving in the Commission under a recess appointment since last November. So he has had firsthand experience at the

Commission, and some familiarity with the issues and challenges before it.

According to the administration's budget, one of the top priorities of the FMC is the deregulation of domestic shipping, and this, of course, would require legislation. It is not clear whether it would be proposed by the Department of Transportation or the FMC. But in either event, the FMC will have to be on the front with the input, since it administers the Intercoastal Shipping Act.

In the past few years deregulation has become a very fashionable concept which, in practice, however, has produced some very chaotic results and, in some cases, hardship for the users it was intended to benefit. So whatever role the FMC plays in this initiative, I would hope its members will keep these experiences in mind.

The comprehensive reform of the Shipping Act, which was enacted last Congress under the leadership of Senator Stevens, is now being fleshed out through administrative interpretations and implementation.

Those of us who participated in the long and difficult task of reworking the Shipping Act of 1916 are well aware that many of the problems the new legislation attempts to address were caused, not by the 1916 act, but by the administrative interpretation and implementation of it over a period of several years. As a consequence, the antitrust tail was wagging the maritime dog, and our U.S.-flag carriers were the principal losers.

Some have expressed fear that this would recur, even though we have tried our best in the new law to guard against that eventuality.

A few years ago, after a long and arduous effort, Congress enacted the Controlled Carrier Act over the objections of the State Department and the Department of Justice. This law was an effort to ensure that our liner trades would remain free and fair and not be disrupted by the economically unrealistic rate-cutting practices of State-controlled carries who were not necessarily commercially motivated.

While it is true that the Soviets were the principal practitioners in this regard, it is not accurate, as some have maintained, that the Controlled Carrier Act was intended solely to safeguard against them. I am certain the legislative history makes this expressly clear.

This act is, of course, administered by the FMC. Since this enactment, there have been several efforts to carve out exemptions, ad hoc and otherwise, under the guise of making our trades more competitive. Unfortunately, the term "competition" in some cases means "an edge" in our trade. And that "edge" would not be for U.S.-flag carriers.

Finally, Mr. Chairman, there is the matter of cargo originating in, or bound for, the United States which, because of a loophole in the law, does not move under tariff filed at the FMC. As a consequence of this loophole, conditions in our trades are not equal as the law intends.

If CAST, for example, wishes to compete with United States Lines for the carriage of screwdrivers from Chicago to Antwerp, all it has to do is inspect United States Lines' tariffs at the FMC and quote a rate to the shipper accordingly.

Conversely, however, if United States Lines wishes to compete with CAST, there is no official place where United States Lines can go to determine CAST's rate.

Besides being unfair, this situation quite legitimately allows CAST to enter into special agreements with individual shippers which would be illegal rebates under our law if CAST were required to file tariffs.

To remedy this situation I introduced legislation in the last Congress, and again in this one. In the past, the FMC has supported it, and I would hope it would continue to do so.

I should emphasize that nothing in my bill requires shippers to ship from U.S. ports. They would remain completely free to use CAST or any other operator from any Canadian or Mexican port. Nor would it mean higher rates. All it would do is make sure that everyone plays by the same rules when they are competing for U.S. cargo.

Mr. Chairman, I thank the committee for its indulgence. At a time when the U.S. liner fleet is sorely pressed, and its traditional sources of subsidy are disappearing, I believe our regulatory agency and its members should be very sensitive that, in the process of regulating our maritime trades, they do not unwittingly take actions which have the effect of especially disadvantaging our own carriers.

Indeed, the Shipping Act of 1984 expressly declares that one of the purposes of the act is, and I quote: "To encourage the development of an economically sound and efficient U.S.-flag liner fleet capable of meeting our national security needs."

I thank you, Mr. Chairman. And may I ask your permission to place into the record an opening statement by Senator Hollings.

Senator STEVENS. Yes. We will be glad to do that.

[The statement follows:]

OPENING STATEMENT BY SENATOR HOLLINGS

I wish to welcome Mr. Philbin, who, of course, is no stranger to the issues before the FMC, since he has been serving on the Commission under a recess appointment.

The Commission has a wide range of regulatory responsibilities, and it must exercise them in a manner that ensures that all liner operators, shippers, ports, and other interests are treated fairly, and as the law intends. Congress created the agency as an independent regulatory body so that its 5 members, acting as a collegial body, would be free to apply the law as Congress intended.

In the last Congress we enacted the first major revision of the Shipping Act in nearly 70 years. The new act is intended to bring our regulatory scheme more in line with the real world of international shipping as it is today, and will become in the 21st century. Like any legislation of such magnitude, it will undoubtedly need fine tuning as we see how it actually works. The FMC should be the first to know if something is not working, and I would hope, as a commissioner, you will do your best to see that we in Congress are the second to know.

On the other hand, "if it isn't broken, please don't recommend that we fix it." In the same vein, I would hope that you would look very closely at any initiative to deregulate our domestic trades. You administer the Intercoastal Shipping Act, and are therefore not only the experts, but, as I have noted, free to make your own decision.

I am sure you will find this committee most supportive of your efforts at the Commission, and most receptive to any suggestions you may have to improve its effectiveness.

Senator **Inouye**. And Senator Ford was here for 25 minutes, but he had to go to another meeting. He wishes to be recorded as being present, and will try his best to be back.

Senator **Stevens**. Thank you very much.

Senator **Inouye**. Mr. Chairman, I have a whole list of questions which I've already discussed with Mr. Philbin. May I submit them for the record and request that Mr. Philbin respond to them?

Senator **Stevens**. Yes; I am sure that is fine.

We are pleased to welcome Congressman Bill Lowery of San Diego to introduce the nominee.

Congressman Lowery.

STATEMENT OF HON. BILL LOWERY, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. **Lowery**. Thank you, Mr. Chairman, for the opportunity to appear today.

Mr. Chairman, I have a statement of introduction that I would like to present for the record from California's junior Senator, Pete Wilson, who also is a familiar acquaintance of Ed Philbin.

In addition, Mr. Chairman, I would like to take a moment and thank you for your efforts in establishing an Environmental Restoration Fund in the Department of Defense appropriation bill. One of the first projects that this fund will be used for happens to be in my district, and will clean up ordnance left over from an old World War II firing range, On behalf of my constituents, the people of San Diego, we certainly thank you for your efforts.

Senator **Stevens**. Thank you. The Senator's statement will be put in the record, and I thank you for the comment.

[The statement follows:]

STATEMENT OF HON. PETE WILSON, U.S. SENATOR FROM CALIFORNIA

Chairman Stevens and distinguished members of the Committee, it is my pleasure to join my House colleague, Congressman Bill Lowery, in presenting to you Mr. Edward J. Philbin of California for confirmation to the Federal Maritime Commission. Such hearings as this are nothing new to Mr. Philbin, whose eminent record of military service and academic expertise led President Reagan in 1981 to appoint him Deputy Assistant Secretary of Defense for Reserve Affairs—the highest ranking civilian in today's Pentagon. In the years since, the nominee has provided superb guidance to our Armed Forces' Reserve components. Impressive as his Pentagon record is, it by no means exhausts the nominee's credentials or conveys the broad sweep of his professional experience.

To suggest some of both, one must trace his career backwards. Mr. Philbin first demonstrated a marked propensity for good judgment when he decided to leave New York for San Diego—a city of which I have more than passing familiarity—where he earned a degree in Mechanical Engineering from San Diego State University. To this was later added a Juris Doctor from the University of San Diego.

In the years that followed, Mr. Philbin served with honor in both the active and reserve forces. A tour of duty in Vietnam preceded his 1978 graduation from the Air War College, and his subsequent appointment to that institution's faculty—the first reserve officer to be so honored.

"This is perhaps the most beautiful time in human history," said Dr. Jonas Salk, another San Diegan. "It is really pregnant with all kinds of creative possibilities made possible by science and technology which now constitute the slave of man—if man is not enslaved by it."

To comprehend both the possibilities and the problems associated with technological genius one needs more than mathematical skills or scientific know how. One needs civility, perspective, the insights afforded by history and the wisdom that comes with experience outside the classroom. Mr. Philbin has demonstrated all this and more in a host of articles and studies in the fields of engineering, physics, law and military affairs. For excellence in political-military thought, he has been received by the National Geographic Society's General Orvil Anderson Award. But no medal or citation alone can adequately convey his qualities of imagination and dedication to the work at hand, and the possibilities so eloquently glimpsed by Dr. Salk.

We are indeed fortunate, Mr. Chairman, that Ed Philbin has responded to the President's call that he remain in harness, this time as a member of the Federal Maritime Commission. It is an important position to which he has been nominated. But I have not the slightest doubt of his capacity to fill it with distinction. I am delighted to present him to you now, a true public servant. And I am hopeful that his confirmation may be handled with all deliberate speed.

Mr. LOWERY. It is my pleasure to introduce a temporarily transplanted constituent and good friend, Edward J. Philbin, the President's outstanding choice for Commissioner of the Federal Maritime Commission.

Mr. Philbin's meritorious career has encompassed engineering, physics, law, and military affairs. He has received numerous awards for excellence in all of these fields, and has authored over two dozen articles and studies.

Prior to his appointment to the Federal Maritime Commission by President Reagan on November 28, 1984, he was the highest ranking civilian appointee for Reserve affairs in the Department of Defense. His Reserve career began in 1949 as an enlisted naval air reservist, and he still holds the rank of colonel in the Air Force Reserve.

Mr. Chairman, it is my pleasure to introduce to the committee one of San Diego's favorite sons, a true renaissance man, and one of the most competent men in Government today, Edward J. Philbin.

Mr. Chairman, if you would be kind enough to excuse me, I have an appropriations hearing that I need to attend on the other side of the Capitol.

Senator STEVENS. Thank you very much for coming.

Do you have any comments, Senator?

Senator INOUYE. No. I thank you for your presence.

Senator STEVENS. Mr. Philbin, we have your biographical sketch which we will include in the record.

[The biographical sketch follows:]

BIOGRAPHICAL SKETCH OF EDWARD J. PHILBIN

Residence: 5723 Walnut Wood Lane, Burke, Virginia 22015.

Date and place of birth: New York, New York (Manhattan), 7 August 1932.

EDUCATION

California State University, San Diego; 1952-1957; BS Mech. Engr., June 1957.

University of California, San Diego; 1959-1962; Graduate Courses in Mathematics and Physics; No degree.

University of San Diego, School of Law; 1962-1965; Juris Doctor, Summa Cum Laude; June 1965.

Air War College; Class of 1978; Distinguished Graduate; June 1978.

EMPLOYMENT RECORD

June-Oct 1957; GD/Convair; San Diego, CA: Design Engineer.

Oct. 1957-Nov. 1959; U.S. Air Force; Harlingen, TX, Sacramento, CA and Johnson AB; Japan; Lieutenant.

Nov. 1959-Feb. 1965; GD/Convair; San Diego, CA; Physicist.

July 1965-June 1966; GD/Astronautics; San Diego, CA; Senior Physicist.

June 1966-June 1970; Hecsh, Hegner and Philbin; San Diego, CA; Attorney.

June 1970-June 1981; University of San Diego, School of Law; San Diego, CA; Assistant Dean (2 years) and Professor of Law.

June 1981-June 1984; Dept. of Defense; Washington, D.C.; Deputy Assistant Secretary of Defense for Reserve Affairs; Acting Assistant Secretary of Defense for Reserve Affairs, 1 Oct. 1983-30 April 1984.

June 1984-Nov. 1984; Federal Maritime Commission; Washington, D.C.; Consultant to the Chairman.

28 Nov. 1984-Present; Federal Maritime Commission; Washington, D.C.; Commissioner (recess appointment).

NOTE. August 1977-August 1979; U.S. Air Force, Air War College; Maxwell AFB, AL; Lt. Col. (Resident Student and Visiting Professor of Law); on leave from the University of San Diego.

Senator STEVENS. Mr. Philbin.

STATEMENT OF EDWARD J. PHILBIN

Mr. PHILBIN. Mr. Chairman, it is nice to appear again before you for testimony. I have a short statement which I would like to put into the record if I may, either orally or otherwise in the interests of time, as you desire.

Senator STEVENS. I have looked at your statement. We will put it into the record in full. Why don't you just summarize your statement for us?

Mr. PHILBIN. In essence, sir, the statement indicates the basic philosophy with which I approach the work of the Federal Maritime Commission, and that philosophy in essence is that I believe, wherever possible, market forces should operate in the maritime industry.

But I would like to assure you that I am not in favor of deregulation for the sake of deregulation heedless of cost, and I will not approach my FMC decisions in that way. I believe that each issue has to be developed on its merits and decided on its merits.

I assure you that is the way I will approach any of the issues presented before the Commission. With that, sir, I will just enter the statement for the record. I stand ready to answer any questions that you might have.

[The statement follows:]

STATEMENT OF EDWARD J. PHILBIN

I am deeply honored by President Reagan's expression of trust and confidence in his nomination of me to be a commissioner of the Federal Maritime Commission. It is also a welcomed challenge and, if I am confirmed, it will be a duty that I will perform to the best of my ability.

I am very fortunate to have been nominated for this position so soon after the enactment of the Shipping Act of 1984, As I see it, this legislation is a giant step in the direction of free enterprise for the maritime community and that is a step in the right direction.

As the members of the committee know so well, the President's signing this act into law culminated years of strenuous legislative efforts by the Congress to develop a framework to strengthen the ability of U.S.-flag ship operators to compete effectively in international commerce. This objective was accomplished primarily by eliminating needless Government regulation which in the past had caused long delays in Commission rulings and consequent widespread confusion in the industry. By doing away with these regulatory shackles of the industry, competition dictated by market forces will be greatly enhanced and the policy goals stated in the act will be that much closer to fulfillment. While I support those "free market" principles and have used them to guide my decisions since my appointment and, if confirmed, will continue to do so in future commission deliberations, I am not mindlessly dedicated to deregulation for its own sake and at any cost. In fact, my independent study of industry problems since my appointment has led me to conclude that it is not desirable to totally deregulate the maritime industry.

My basic philosophy is to allow the industry to conduct business as freely as possible in response to market demands. Consequently, I believe the regulatory arm of government should be used with restraint and only when the facts of a particular case make it absolutely necesssary. Foremost in all of these considerations is the protection of the public interest which, of course, includes not only the interests of the carriers, but those of the shippers and the consumers as well. A natural consequence of this concept is the necessity to protect U.S.-flag carriers in the foreign trades. Assuring U.S.-flag carriers equal treatment in, and free access to, the foreign trades is in the public interest; and, I believe, that will be one of the most important functions of the commission in the years to come. At the same time, I am entirely cognizant that the act specifies that the regulatory process is to be "nondiscriminatory" and I fully support that mandate.

Mr. Chairman, the new act deals with the public interest not only in the economic sense. As you know, one of the three facets of policy stated in the act is aimed at encouraging "the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs." I believe the experience garnered in my 30-plus years as a naval and Air Force reservist, including 3 years (June 1981–June 1984) as the senior civilian appointee in the Department of Defense having responsibility for our reserve forces, will be especially useful to the Commission as we face these national security issues. I am extremely sensitive to the critical role the Nation's maritime industry must play in the sea lift of our forces and their equipment should a future conflict arise.

I feel that the work of the Federal Maritime Commission at this juncture is more important than ever before for two important reasons. First, the role of the Commission in implementing the Shipping Act of 1984 is paramount. It would be personally and professionally rewarding to be a part of that process. Second, in the current international economic environment, the health, and perhaps even the survival, of our maritime industry is at stake. In a way, the Shipping Act of 1984 is a "grand experiment." If the experiment is a success, it will mean gains for our ports, carriers, shippers, and the American public. If it is not, we will have to go back to the drawing board. The Federal Maritime Commission, under the leadership of Chairman Alan Green, is working strenuously to make the experiment a success. If confirmed, I intend to do everything in my power to assist him and my fellow Commissioners, as I have in the past, toward achieving the goal.

If confirmed, I shall assist in the development of a sound maritime policy which will support the industry by striking a fair and reasonable balance among the various competing interests, including the public. With the enactment of the Shipping Act of 1984, the tools have been provided: The challenge will be to put them to the best use.

Mr. Chairman, I reiterate that it is an honor for me to be here this morning and I shall do my best to answer any questions you may have.

Senator STEVENS. We thank you very much for that. We will put in the record also any answers to the questions that will be submitted by the committee.

And I can state also that I have reviewed the FBI report that has been presented as a normal, routine matter.

Mr. Philbin, are you familiar with our 1984 act and the changes that were made last year?

Mr. PHILBIN. Yes, sir; I have gone through it thoroughly. I have also joined with my fellow Commissioners in decisions under the 1984 act, and I have gone through and studied the legislative intent of the act.

Senator STEVENS. Do you have any problem about aggressively pursuing the intent of the act?

Mr. PHILBIN. No, sir; I certainly do not. As a matter of fact, under 13(b)(5) of that act, which as you know, has as an ultimate goal the establishment of an open marketplace in international liner shipping in which U.S.-flag carriers can participate freely, my personal view is that the FMC should be as aggressive as the law and facts of a particular case permit.

Senator STEVENS. Do you have any difficulty with the shippers association concept as incorporated in this new law that will permit associations of shippers, for instance, the harvesters of fish, the fishermen's associations from my State, to band together to seek lower trade costs, lower shipping costs under the act?

Mr. PHILBIN. No, sir; I think it is a very wise provision of the act because, as the Senator knows, in the past only large shippers whose volume of shipments are sufficient to provide necessary economies of scale to the carriers, were in a position to ask the carriers for any type of discount. I believe that the shippers association provision which permits the agglomeration of small shippers is a part of the legislative scheme to improve the small shippers' negotiating provision vis-a-vis the carriers.

I believe that section of the act provides a required balance which permits a degree of Government deregulation and allows the interaction of the shippers and the carriers to operate in a regulatory manner with regard to marketplace forces.

I think it is a very, very wise provision.

Senator STEVENS. I am told there was some press comment concerning the action that was taken by the Department of Defense concerning the promotion of Ed Meese at the time when you were the Deputy Assistant Secretary of Defense for Reserve Affairs?

Mr. PHILBIN. Yes, sir; that is correct.

Senator STEVENS. Did you hold that position during the time when that promotion took place in the Reserves for Mr. Meese?

Mr. PHILBIN. I was sworn into that position in mid-June 1981 and thereafter Mr. Meese returned to the Ready Reserve in July 1981. So, I was in office during that period of time. Yes, sir.

Senator STEVENS. Well, I don't have any question about it, but I understand there has been some question raised by the press. Did you have any contact with that action that should lead to some questioning of your role in relationship to Mr. Meese's promotion?

Mr. PHILBIN. No, sir; there has been speculation in the press, especially in June 1984, in a Washington Post article on the Federal Report page, which indicated or implied that I had been involved in some way in Mr. Meese's promotion.

The answer is that the promotion board which considered Mr. Meese for promotion to colonel met in October 1982 and no one, to my knowledge, at the Department of Defense level was even aware of the promotion sequence until some time in the latter part of January 1983 after the Army board had reached its decision.

I myself did not learn that Mr. Meese was in the Ready Reserve or had been considered for promotion until approximately January 24, 1983.

Excuse me, sir. That was January 25, 1983.

Senator STEVENS. I don't know how people remember what they were doing on January 23 or 25 that many years ago anyway.

Mr. PHILBIN. Well, there had been so much speculation about Mr. Meese's promotion, after the event, that I had my Pentagon staff research the records of the DOD Reserve affairs organization immediately after the promotion was first talked about in the newspapers. And I fortunately have a complete file and a chronology of all the events as a result of that research.

I am very specifically able to pinpoint the day that I first learned of the promotion, because Mr. Weinberger had asked a question of Assistant Secretary Korb to whom I reported. Assistant Secretary Korb thereafter asked me to brief them on the whole procedure and that all occurred on January 25. I know that was the day because we had a scheduled meeting on that date and I answered his questions about the Meese promotion by memo of February 3, 1983, after talking to the Department of the Army.

Senator STEVENS. Well, I congratulate you for being able to find out. I don't think I could find out where I was on that day.

Mr. PHILBIN. I had a very good staff, Senator.

Senator STEVENS. Again, I want the record to be clear. I don't have any problem about Mr. Meese's being promoted. I think we are better off when we have people holding significant positions in the Government identified with the Reserve. That encourages people to know about the functions of the Reserve and to support it.

So I think we ought to have a requirement that everyone who gets those positions has to be identified with the Reserve or the Guard in some way. It wouldn't do anyone any harm.

But again I thank you for making the record clear.

Mr. PHILBIN. Sir, if I may add one statement on a personal level, which goes along with the statement you just made. To the best of my knowledge, there was nothing unethical or illegal done in the promotion of Mr. Meese.

My personal viewpoint is that there is no man, Regular, National Guard, or Reserve, who is more qualified to hold the rank of colonel.

Senator STEVENS. Thank you very much.

Do you have any questions, Senator Inouye?

Senator INOUYE. Mr. Chairman, I would just like to make a comment and say that I concur fully with Mr. Philbin when he says that he supports competition dictated by market forces.

However, I would like to put a condition on that. I would like to have the competitors or the participants cooperate under the same rules.

Mr. PHILBIN. I would agree with that, sir.

Senator INOUYE. Because we do have competition. But our competitors do not always play under their set of rules.

I think we should keep in mind, for example, that many of the shipping lines who compete for the right to carry U.S. mail across the Atlantic are Government-owned, State-owned shipping lines.

I think the record should show that the successful bidder for the carriage of U.S. mail from New York to Le Havre in the latest bid opening was Polish Ocean Lines. I don't know how American flagships can hope to compete with a State-owned company like that.

So I would like to see competition, but everyone playing by the same rules. I am certain if we play by the same rules, we would once again be a major force in the seven seas.

Thank you, sir.

Senator STEVENS. Thank you.

Well, we will look forward to having you before our committee from time to time as a member of the Maritime Commission.

Yes; I yield to the Senator from Hawaii.

Senator **Inouye**. Mr. Chairman, I move that the committee report favorably the nomination of Mr. Philbin to the full Senate.

Senator **Stevens**. Thank you, Senator. We will act upon that motion. It is my understanding that we will have to have the nomination ~~polled out.~~

Staff informs me that we may be able to schedule this on Friday when there is a scheduled markup. If that is possible we will do so. In any event, we do ask you to respond to the Senator's questions as quickly as possible. He has indicated that would not necessarily hold up the reporting of the nomination if the full committee decides to do it.

If the full committee does not decide to take it up on Friday, I will ask when we return that we try to poll out the nomination as soon as we can.

Thank you very much for your courtesy, Mr. Philbin.

Mr. **Philbin**. Thank you, Mr. Chairman, Senator.

[Whereupon, at 2:55 p.m., the hearing was adjourned.]

[The following information was subsequently received for the record:]

Question of Senator Kasten and the Answer

Question. Mr. Philbin, since you have worked at the Department of Defense, and understand the importance of increasing the volume of Department of Defense (DOD) shipments transported out of the Great Lakes, can you tell me why less than 1/10 of 1% of the cargoes are presently shipped out of the Great Lakes ports? (Even though a large percentage of these cargoes are manufactured in the Great Lakes region.)

Answer. Under a statute passed by Congress in 1904 (Military Transp. Act of 1904; 10 U.S.C. 2631), one hundred percent of U.S. military cargo must be shipped aboard U.S.-flag carriers. Such shipments are awarded to the low cost U.S.-flag carrier based upon bids submitted every six months with a bidding cycle beginning 4-1 and 10-1. In the past, the seasonal nature of the Great Lakes trade and the lack of U.S.-flag service limited service through this range. Now, however, a new U.S.-flag carrier has filed a tariff with the FMC and will commence service on or about April 15, 1985. That carrier is Fednav Lakes Services, Inc., operating between the Great Lakes (and East Coast Ports) and North Europe. Fednav has also bid in the current Military Sealift Command cycle. I do not know whether or not this bid will result in any additional military shipments.

Questions of Senator Inouye and the Answers

Question. When the U.S. Government negotiates an agreement with a foreign government reconciling conflicting policies of the two countries, what is the commissions role under section 19? (That section empowers the FMC to take action against a carrier or country when it determines that unfavorable conditions to U.S. carriers or trade exist).

Answer. The response to this question requires further information as to what type of agreement has been signed between the U.S. and the foreign government. For instance, if a bilateral agreement clearly stated that cargo sharing between the two countries was to be permitted, and that third-flag carriers were to be denied access to the entire trade, then the Commission might take a different view towards the rights of third-flag carriers than would be the case where the bilateral agreement stated that the bilateral-flag carriers of each nation should have equal access to only government impelled cargoes and not the entire trade. Thus, the degree of specificity of the bilateral agreement would determine in part the Commission's role under section 19.

Question. The Shipping Act of 1984, mandates a policy "to encourage the development of an economically sound and efficient U.S.-flag liner fleet." In other words, the FMC should administer the Act to ensure competitive parity for U.S.-flags.

Some have criticized this provision in the 1984 Act, on the grounds that the FMC and the law should be neutral, or "flag-blind", and that this provision is pro U.S.-flag.

Do you have any problem with administering the 1984 Act in a manner which carries out this policy mandate?

Answer. First and foremost, the Commission is a regulatory agency and its authority is strictly limited by statute. In investigating alleged violations of section 10 of the Act, the Commission must apply the facts to the applicable law in a nondiscriminatory manner. It matters not to what nation a carrier may belong in making such determination. There is, however, one section of the Act which expressly permits the Commission to encourage the development of a U.S.-flag fleet. Section 13(b)(5) allows the Commission to take certain retaliatory actions against any carrier or foreign government which unduly impairs the access of a U.S.-flag carrier in a foreign-to-foreign, or cross, trade. 46 U.S.C. app. § 1712(b)(5). This section should serve as the appropriate vehicle for ensuring competitive parity for U.S.-flag carriers. As a Commissioner, I would stand ready to employ it aggressively when warranted.

Question. The declaration of policy of the 1920 Act states that the purpose of the Act is to foster a U.S.-flag merchant marine.

Some see the purpose of section 19 of that Act as only maintaining an open trades policy even if that works to the detriment of U.S.-flag interests.

What do you think is the FMC's proper role?

Answer. I am aware of no Commission action which has had a detrimental effect upon the interests of U.S.-flag carriers or which has in any way hindered the policy of the Merchant Marine Act, 1920 of promoting the American merchant marine. The focus of section 19 is to address conditions "unfavorable to shipping in the foreign trade" which arise out of foreign government laws or decrees or the competitive practices of private interests. In considering a rule or remedy under section 19, the Commission should keep in mind the impact of that remedy on U.S.-flag carriers engaged in the affected trade. I believe that a policy of maintaining open trade is beneficial to U.S.-flag carriers and is consistent with the open trade philosophy that underlies section 13(b)(5) of the Shipping Act of 1984. With the recent advent of new round-the-world services by U.S.-flag carriers, the administration of an open trade policy through vigorous enforcement of section 19, and its companion section 13(b)(5), should be of increasing importance and benefit to U.S.-flag carriers.

Question. When Congress enacted the Shipping Act of 1984, one of the new provisions we added empowers the FMC to impose sanctions, including tariff suspension, on foreign-flag carriers when such carriers or their host nation unduly impair access of U.S.-flag vessels to cross-trading (section 13(b)(5)).

As you are aware the UNCTAD Code on Liner conference conduct has, in effect, a 40-40-20 cargo sharing provision. The U.S. is not a signatory to the Code, and there is concern by many that these cargo sharing provisions will unduly impair access of U.S.-flag vessels operating as cross-traders in a Codist trade.

Section 13(b)(5) of the 1984 Act is, of course, one tool the FMC has to counter such discrimination, if it is willing to enforce that section vigorously.

What are your views?

Answer. I am clearly aware of the fact that section 13(b)(5) of the 1984 Act stemmed in part from the United States Government apprehension about the effects of the UNCTAD Code of conduct, specifically the 40-40-20 cargo sharing provision. I believe the FMC should play an active role in protecting the rights and interests of the U.S. in the cross-trading sector. As you are aware, the FMC has implemented rules and regulations for section 13(b)(5) which were intended to demonstrate to the shipping world that the FMC will vigorously support U.S.-flag carriers' access to the cross trades. The FMC has also recently initiated a program whereby we have contracted the presidents of the U.S.-flag shipping lines and asked that they meet with the Chairman to discuss any current or potential problems they have operating as cross traders. We have asked the shipping lines to provide information as to their proposed activities in this sector and to document any potential problem areas. It is our desire to be prepared for any potential impairment of access to U.S.-flag vessels. Our rules and regulations, we believe, give us the flexibility to swiftly counter any impairment of U.S.-flag vessels.

Question. In my opening statement I mentioned three matters with which I was especially concerned: Deregulation of our domestic trades; implementation of the Shipping Act of 1984; cargo diversion.

Since you have been on board at the FMC since last November, do you have any views on any of these matters which you would like to state for the record?

DEREGULATION OF OUR DOMESTIC TRADES

Answer. For the last few years the Federal Maritime Commission has undertaken a series of initiatives to reduce and eliminate regulatory burdens in the domestic offshore trades. However, it appears that the Commission is reaching a point where it is very difficult to further deregulate while still complying with the minimum requirements of the Intercoastal Shipping Act. Furthermore, the ability of carriers to select for themselves whether they will come within FMC or ICC jurisdiction renders further administrative actions in this area of questionable efficacy. Therefore, it is clear to me that further inquiry is critically needed to: (a) determine the level of regulation that is needed to balance the barriers to entry in these trades resulting from the Jones Act restrictions, and (b) determine what agency or department is best suited to undertake this regulatory responsibility. Hopefully, this inquiry would result in appropriate remedial legislation.

IMPLEMENTATION OF THE SHIPPING ACT OF 1984

I have been well aware of the various Commission activities to implement the Shipping Act of 1984. I believe that the Commission did an outstanding job in soliciting and considering the views of the shipping industry and in issuing final rules in all major areas before its interim rules expired. These rulemakings involved a considerable amount of effort and I feel that everyone associated with them should be justly proud of their accomplishments.

There will be, of course, further rulemakings necessary to complete implementation of the Act. Some will involve fine tuning of the rules already in place to smooth out some problem areas which have arisen since the rules went into effect. Others will address those areas which did not immediately require implementing rules. As a Commissioner, I will attempt to ensure that in all such endeavors the Commission continues its policy of employing the minimum amount of regulation necessary to effectuate the Act.

CARGO DIVERSION

For the past several years, Congress has considered various bills which would affect the diversion of cargo from United States inland points through ports in countries bordering the United States. As I understand it, ports on the East Coast of the United States are particularly concerned about this situation because they believe that much of the cargo which moves through Canadian ports would otherwise move through their ports. It has also been stated, however, that any cargo "lost" by the East Coast ports has been offset by Canadian origin cargo which moves via West Coast ports.

During the last session of Congress the Federal Maritime Commission had the opportunity to comment on H.R. 1511, a bill which would have required, *inter alia*, that carriers offering through transportation of U.S. cargoes via Canadian or Mexican ports file tariffs containing their rates for such services with the Commission. At that time, the Commission took no position on the need for such legislation. The Commission did note, however, that if Congress wanted to make all carriers offering through intermodal transportation of U.S. cargoes subject to the same regulatory requirements, the approach taken in H.R. 1511 was an appropriate one.

I believe that the Commission should continue to maintain this position. When and if Congress determines that a problem exists of sufficient magnitude to warrant remedial legislation, the Commission should stand ready to implement any new responsibilities it may have acquired as a result.

DOUGLAS A. RIGGS TO BE GENERAL COUNSEL, DEPARTMENT OF COMMERCE

FRIDAY, MAY 3, 1985

U.S. Senate,
Committee on Commerce, Science, and Transportation,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SR-253, Russell Senate Office Building, Hon. Theodore F. Stevens presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member; Bob Eisenbud, staff counsel; and Cheryl Wallace, minority staff counsel.

OPENING STATEMENT BY SENATOR STEVENS

Senator Stevens. This is the hearing on the nomination of Douglas A. Riggs.

I have the honor today of chairing the Senate Commerce Committee hearing on the nomination of Doug Riggs for the position of General Counsel to the Department of Commerce. I am confident that Doug will execute this position when confirmed with the same professionalism and expertise that he has demonstrated in all his other endeavors.

Doug's prior experience includes most recently a position as White House liaison to veterans, labor organizations, military organizations, among others. In this position Doug significantly enhanced the White House's relationship with these groups—Doug served his country well.

Due to his fine job in this capacity, the President has asked Doug to assume the responsibility of General Counsel at the Department of Commerce. This job requires significant legal and managerial skills, in both of which I'm happy to say Doug has proven his expertise. Doug was the managing partner of the Anchorage office of Bogle & Gates, one of the largest and most respected law firms in the Northwest. His legal experience stems from labor negotiations during the construction of the trans-Alaska pipeline and from providing legal advice during consideration of the Alaskan lands bill. Doug's legal counsel has always been exemplary, and I'm informed by a member of my staff who worked for him when he managed Bogle & Gates office in Anchorage that he is also a fine man to work for.

I give my unqualified recommendation on behalf of Douglas Riggs' nomination for the position of General Counsel at the Department of Commerce.

I am most privileged, to be able to chair this hearing when my colleague presents our good friend, Doug, for confirmation as General Counsel of the Department of Commerce.

I was the General Counsel of an agency, the Department of the Interior, at one time, but I never got my confirmation hearing.

So, Doug, you are ahead of me.

Senator Murkowski.

STATEMENT OF HON. FRANK MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator Murkowski. Thank you, Senator Stevens.

That statement whets my curiosity.

Might you not have had any friendly Senators from Alaska at that time?

Senator Stevens. Well, there was an election that intervened, as I recall.

Senator Murkowski. Thank you, Mr. Chairman.

I have the extreme pleasure and honor of introducing Mr. Douglas Riggs, of Anchorage, AK, to the committee this morning.

This is a very special honor to me.

Douglas is not only an outstanding Alaskan, but also a close personal friend. I am pleased to be here today to support him in his nomination to be General Counsel of the Department of Commerce.

Doug was the first Alaskan to serve in the Reagan White House, as a special assistant to the President for public liaison. He has been responsible for liaison between the White House and organized labor, veterans, military service organizations, sportsmen's organizations, fraternal organizations, the nuclear power industry and the maritime industry.

Douglas has been responsible for enhancing the relationship between these constituent groups and the White House.

Let me say that in this capacity he has served the President well. I might add, as chairman of the Senate Veterans Committee, not just a few representatives of the veterans organizations have expressed their regrets at the departure of Mr. Douglas Riggs from the White House.

Doug has now been asked by the President to serve as his General Counsel at the Department of Commerce, a job that I am sure he will find most challenging. As general counsel, he will be the chief legal adviser to Secretary Baldrige. This job will call for his presiding over significant legal and policy issues, including international trade, telecommunications, and marine fisheries, items, of course, of great interest to you, Mr. Chairman, and to the balance of the Alaska delegation.

Douglas graduated from Cornell University School of Law in 1973 and then moved to the State of Alaska. One of his first clients was the Teamsters Local 959, the largest union organization in Alaska. He was directly involved in difficult labor relations arising from the construction of the trans-Alaska pipeline. He was instrumental in the implementation of the project agreement that governed the construction of the trans-Alaska pipeline system, which now supplies 20 percent of our domestic crude oil.

In 1975, Douglas was appointed by Governor Hammond and then-Commissioner of Commerce and Economic Development, Mr. Langhorne A. Motley, who now serves as Assistant Secretary of State for Inter-American Affairs at the State Department, as general counsel of the Alaska State Housing Authority.

He served later as executive director of the Alaska Housing Authority. His appointment to the Housing Authority preceded a period of intense official investigation because of practices of that agency. He was given instructions by then-Governor Hammond to clean up the housing agency, a task that he successfully completed in 1976.

I think that fairly outlines the diversity of responsibility that Douglas Riggs has had in his career.

In 1977, the Governor then saw fit to appoint Doug Riggs as his special counsel here in Washington, at the height of the Alaska D-2 lands debate, an issue, of course, that you, Mr. Chairman, played a very key and major role in. In the capacity of special counsel he represented the Governor before the Congress and Federal agencies on the Alaska lands legislation that was pending before Congress at that time.

In early 1979, Mr. Riggs was asked by the Citizens for Management of Alaska Lands to assist in coordinating the lobbying effort of the various business, labor, and citizens groups on the Alaska lands legislation. He served in that capacity as senior counsel until 1980.

In 1980, Mr. Riggs returned to Alaska to join the law firm of Bogle & Gates. He established the Anchorage office. It is one of the oldest and largest firms on the Pacific coast. He was a partner in charge of the firm's Anchorage office.

Mr. Riggs remained in private practice in Alaska until 1983, when he was asked by the President to come to Washington to join his White House staff.

Mr. Chairman, I believe you would agree that Mr. Doug Riggs is extremely well qualified for the position of General Counsel for the Department of Commerce.

It is indeed an honor for me to appear before this committee to recommend this outstanding Alaskan and my good friend for this important position.

Thank you, Mr. Chairman.

Senator STEVENS. Thank you, Senator Murkowski.

I have your biographical statement and your answers to the prehearing questions which I will include in the record.

[The material referred to follows:]

BIOGRAPHICAL SKETCH OF DOUGLAS ALLEN RIGGS

Address: 1077 30th Street, N.W., Washington, DC 20007.
Date and place of birth: August 20, 1944, Rigby, Idaho.

EDUCATION

Cornell University, J.D., Ithaca, New York, 1970 to 1973.
West Virginia University, M.S., Morgantown, West Virginia, 1966 to 1967.
Brigham Young University, B.S., Provo, Utah, 1964 to 1966.
Ricks College, A.S., Rexburg, Idaho, 1962 to 1964.

EMPLOYMENT RECORD

(List all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.)

Special Assistant to the President for Public Liaison, The White House, Washington, D.C., 11/83 to the Present.

Associate Director, Office of Public Liaison, The White House, Washington, D.C., 7/83 to 11/83.

GOVERNMENT EXPERIENCE

List any experience in, or association with, federal, state or local governments including any advisory, consultative, honorary or other part time service or positions.

Special Assistant to the President for Public Liaison, The White House, Washington, D.C. 20500.

Associate Director, Office of Public Liaison, The White House, Washington, D.C.

Special Counsel and Administrative Assistant to the Governor, Office of the Governor, State of Alaska, Washington, D.C.

Executive Director, Alaska State Housing Authority, Anchorage, Alaska.

General Counsel, Alaska State Housing Authority, Anchorage, Alaska.

QUESTIONS OF THE MINORITY AND THE ANSWERS

Question. What role does the General Counsel play in setting the policies of the Department of Commerce?

Answer. The General Counsel is the chief legal officer of the Department of Commerce. He is responsible for providing legal advice with regard to the programs of the Department and for establishing legal policy. If confirmed as General Counsel, I shall provide advice to the Secretary of Commerce, as requested, on all issues of interest to him. I anticipate having an excellent working relationship with Secretary Baldrige and I look forward to serving as his General Counsel.

Question. Are you planning to make any major changes in personnel or policies within the Office of the General Counsel?

Answer. It is too early for me to make any decisions with regard to changes in personnel or policies within the Office of the General Counsel. The Office of the General Counsel has developed an excellent reputation for professionalism and the high caliber of its staff. If I am confirmed, I will evaluate the personnel and policies of the Office, and make any decisions about the need for change based on that evaluation.

Question. With what issues, besides those assigned specifically to you by the Secretary, will you concern yourself in the near future?

Answer. If I am confirmed as General Counsel, I will undertake to familiarize myself with the large number of diverse and important issues before the Department of Commerce. I would expect to become involved with those in most need of my attention, which might include, by way of example: Uniform product liability legislation, and upcoming round of trade negotiations under the GATT.

Question. In his State of the Union Address, President Reagan noted that need for trade reorganization or better trade policy coordination. Does the Administration have a proposal?

Answer. The President has decided not to pursue at this time the Department of Commerce's proposal for a new Department of International Trade and Industry. Nonetheless, the President has a strong commitment to improving trade policy coordination. One aspect of this improved consideration is found in Mr. Reagan's reorganization of the Cabinet Council system. This reorganization eliminates the Cabinet Council on Commerce and Trade and the Senior Interagency Group on International Economic Policy, and replaces them with a new Economic Policy Council. With fewer organizational entities involved in trade policy-making, the Executive Branch will experience improved trade policy coordination.

Question. What steps has the Department of Commerce taken to implement the Service Industries Development Act, passed as part of the 1984 Trade and Tariff Act?

Answer. Due to the fact that I have not been responsible for this matter in my present job, I am not personally familiar with the details of this implementation. I am informed, however, that the Department has consulted on this program with interested members and staff, and with the membership of the Industrial Sector Advisory Committee responsible for services. A number of industry studies are either in progress or in the planning stages, including a look at U.S.-Japan cargo trade (both sea and air), and the effect of state-sanctioned monopolies on international trade in the insurance and telecommunications industries. The new services data-gathering authority provided by the Act will be implemented in the very near future by the Bureau of Economic Affairs. The Department is working closely with the Office of the United States Trade Representative in implementing the new negotiating authority provided by the Act, in the form of new bilateral and multilateral services trade agreements. The Department is also involved in the ongoing GATT consultations regarding trade in services in Geneva. It is hoped that these consultations will lay the foundation for inclusion of trade in services in the new GATT Round.

Question. Groups such as the American Bar Association, the National Conference of State Legislators and the Conference of Chief Justices oppose S. 100, a bill to create a Federal product liability law, because they believe, among other things, that the legislation would not achieve uniformity. Do you think it would and if so, how?

Answer. I understand that the Administration fully supported S. 44, considered in the 98th Congress, the objective of which was to replace the costly and confusing patchwork of existing state product liability laws. While I am not yet familiar with all aspects of S. 100, to the extent that it mirrors S. 44 and accomplishes its objectives of providing uniform standards to several areas of product liability law, I have every reason to believe that the Administration would support this bill as well.

Question. Consumer and labor groups oppose S. 100, the product liability bill, as they believe it to be unfair to plaintiffs. What is your opinion of compensation bills which have been proposed by Senators Dodd and Gorton?

Answer. The issues relating to compensation schemes are extraordinarily complex. I think this Administration is wary of supporting these compensation schemes until they have been the subject of greater study.

Question. In your work experience, have you had occasion to deal with issues involving fisheries, marine mammal conservation, coastal zone management, and other oceanic and atmospheric matters? If so, what was the extent of your involvement in these issues?

Answer. As a resident of Alaska, as a partner in a major law firm in that state, and as one who has actively participated in the development of state policy on a variety of topics, I could not help but become familiar with these matters and their effect on my community and its business activities. Thus, while I have not dealt specifically with all of these various issues, I have acquired some notion as to what is involved in these areas of the law, and expect to become proficient in them with relative ease.

Question. On legal questions arising out of the responsibilities of the National Oceanic and Atmospheric Administration, what will your role as General Counsel be in comparison to that of the NOAA's General Counsel?

Answer. The General Counsel of NOAA is a position created by statute to serve as the chief legal officer of NOAA. The General Counsel of NOAA is responsible for providing legal advice to the Administrator of NOAA. I firmly believe, however, that the Department must speak with once voice on legal policy and legal opinions and that the principal spokesman and chief counsel for the Department is—and must be—the General Counsel of the Department. Where there are disputes between the General Counsel of the Department and the General Counsel of NOAA, the opinion of the General Counsel of the Department will prevail. Moreover, the General Counsel of this Department will continue, as he has in the past, to provide legal guidance and general supervision to all attorneys in the Department of Commerce.

Question. There have been instances in recent years where states have instituted laws inconsistent with Federall law under the Department of Commerce's purview, especially in the fisheries arena. Do you expect to file amicus curiae briefs or pursue other avenues to minimize the application of such inconsistent state laws?

Answer. I would certainly expect to file briefs, intervene in lawsuits, or take other action to protect the integrity of the Federal laws administered by this Department, including the Magnuson Fishery Conservation and Management Act. I bleieve it is the obligation of the Federal Government to advise the courts in appropriate circumstances regarding interpretation of federal statutes for which we are responsible.

Senator STEVENS. Do you have a statement, Doug.

STATEMENT OF DOUGLAS A. RIGGS

Mr. RIGGS. Senator, I do.

If I may, at this time I would like to read my statement.

Mr. Chairman, it is a privilege to have been nominated by President Reagan to be the General Counsel of the U.S. Department of Commerce.

It was of equal privilege and honor to have served President Reagan as a member of his White House staff in the capacity of special assistant to the President for public liaison.

As an Alaskan, I am honored, Mr. Chairman, to appear before you today, as my senior Senator, at my confirmation hearing. It is of equal privilege and honor to be accompanied here today and introduced at this hearing by the junior Senator from Alaska, Frank Murkowski.

I appreciate the kind remarks that you and Senator Murkowski have made on my behalf. I have had the privilege of serving both of you in a variety of capacities, and am very proud, as an Alaskan, that you and he represent our State in the U.S. Senate.

The President and Secretary Baldrige have asked me to serve as General Counsel of the U.S. Department of Commerce. With the concurrence of the U.S. Senate, I will undertake that task with an acute awareness of the significant trust and responsibility that the President, the Secretary, and the U.S. Senate has reposed in me. I will perform the duties of that office to the best of my ability.

I feel I am well prepared to serve as General Counsel of the U.S. Department of Commerce.

I appreciate the courtesy that has been extended to me by you, Mr. Chairman, Chairman Danforth, and the other members of this committee. I look forward to working with you, your colleagues, and their staffs.

If you or other members of the committee have any questions at this time, I will be happy to attempt to answer them.

I appreciate the opportunity to appear before the committee this morning.

Thank you.

Senator STEVENS. Thank you.

I am pleased by your statement and I thank you also for your kind remarks.

We have visited together, and I have inquired as to whether there are any questions submitted by members of the majority. There have been none. You have visited, I think, with almost all of those who indicated that they had any questions. I know that you did respond to a series of questions that were put forth on behalf of the minority.

I also personally reviewed the FBI report that has been prepared in connection with this nomination. I have seen many of them, but have never seen one as fine as yours.

I think it is a credit to you and is particularly a credit to the President that he has selected you for this position.

This is like old home week. I really do not have any questions.

Senator Gorton, do you have any questions?

Senator GORTON. No, not really.

Senator STEVENS. I want you to know that we will do our very best to clear this nomination as quickly as possible because I know that Secretary Baldrige is leaving the country next week. You will become No. 3 in line at the Department, and with him gone, you will be No. 2. So it is important that you be confirmed and have the full powers of your office by virtue of consent of the Senate before that time.

We will do our utmost to see that that takes place.

I want to congratulate you for the job you did at the White House. It is obvious that you have developed a very good reputation and made a lot of friends and no visible enemies. That is a credit to your service at the White House and the positions you have held before.

So, if there are no other questions, we will declare this hearing as over and will get on to other business.

I thank you for coming. Thank you, Senator Murkowski.

Mr. **Riggs**. Thank you, Mr. Chairman.

Senator **Stevens**. Thank you.

[Whereupon, at 10:17 a.m., the committee adjourned, to reconvene upon the call of the Chair.]

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